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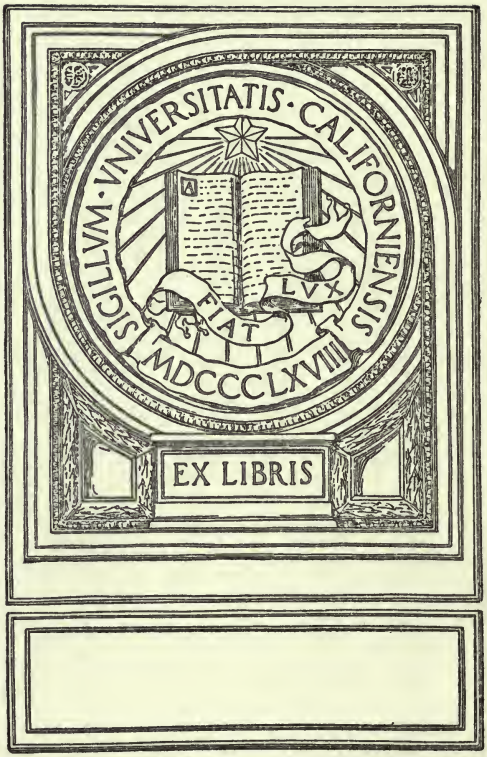
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CARTER H. HARRISON

CHICAGO TRACTION

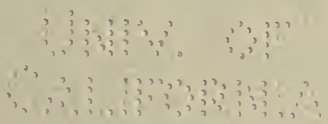
A HISTORY

LEGISLATIVE AND POLITICAL

BY

SAMUEL WILBER NORTON, Ph. D.

MEMBER OF THE CHICAGO BAR



CHICAGO

1907

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by
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UNIV. OF
CALIFORNIA

TO THE RESOLUTE MEN WHO WITHSTOOD THE
AGGRESSIONS OF THE STREET RAILWAY
COMPANIES AND PRESERVED THE
STREETS OF CHICAGO FOR
THE PEOPLE.

M240069

PREFATORY NOTE.

The purpose in writing the following pages has been to present the facts pertaining to the subject from a legislative and political standpoint. The term, political, of course, is used in its broadest sense to refer to the movement toward a larger public control of the street railways. In the main, the chronological order has been followed, although in some instances it has been found necessary, in order to preserve unity, to group facts according to some particular phase of the question. The central theme is the controversy over the streets between the City and the Companies.

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CHRONOLOGY

Mar. 4, 1837—Incorporation of City of Chicago.

Apr. 1, 1848—Constitution of 1848 in force.

Feb. 14, 1851—Charter of City of Chicago revised.

Mar. 4, 1856—Ordinance to Mason and others.

July 19, 1858—Ordinance to Parmalee and others; vetoed by Mayor Haines.

Aug. 16, 1858—Ordinance to Parmalee and others; first to go into effect.

Feb. 14, 1859—Act of Legislature incorporating Chicago City Railway Company and North Chicago City Railway Company and confirming ordinance of August 16, 1858.

May 23, 1859—Ordinances to Chicago City Railway Company and North Chicago City Railway Company; to the former, "during all the term in the act of February 14, 1859, specified and prescribed"; to the latter, for "twenty-five years and no longer."

Feb. 21, 1861—Incorporation of Chicago West Division Railway Company.

Feb. 13, 1863—Charter of City of Chicago revised.

July 30, 1863—Deed of Chicago City Railway Company to Chicago West Division Railway Company to rights to west side streets.

Feb. 4, 1865—Veto by Governor Oglesby of ninety-nine year act.

Feb. 6, 1865—Ninety-nine year act passed over Governor's veto.

Mar. 9, 1867—City charter revised.

Aug. 8, 1870—Constitution of 1870 in force.

Apr. 10, 1872—City and village act passed.

Apr. 23, 1875—City of Chicago voted to incorporate under the city and village act.

May 3, 1875—Vote on incorporation of city under the city and village act officially declared.

Mar. 18, 1878—License ordinance passed.

Feb. 12, 1883—Incorporation of Chicago Passenger Railway Company.

July 30, 1883—Extension ordinance passed.

May 18, 1886—Incorporation of North Chicago Street Railroad Company.

May 24, 1886—Lease from North Chicago City Railway Company to North Chicago Street Railroad Company.

July 19, 1887—Incorporation of West Chicago Street Railroad Company.

Oct. 20, 1887—Lease from Chicago West Division Railway Company to West Chicago Street Railroad Company.

Nov. 14, 1888—Incorporation of West Chicago Street Railroad Tunnel Company.

Mar. 15, 1889—Lease from Chicago Passenger Railway Company to West Chicago Street Railroad Company.

Apr. 1, 1899—Lease from West Chicago Street Railroad Tunnel Company to West Chicago Street Railroad Company.

May 14, 1895—Veto of Crawford bill by Governor Altgeld.

Jan. 1896—Organization of Municipal Voters' League.

May 12, 1897—Defeat of Humphrey bills in House.

June 9, 1897—Allen law approved by Governor Tanner, having passed the Senate and House June 4, 1897.

June 21, 1897—Harlan resolution introduced in Council providing for appointment of committee to investigate street railway conditions.

Oct. 13, 1897—Harlan resolution passed.

Mar. 28, 1898—Harlan report.

Jan. 28, 1899—Incorporation of Chicago Consolidated Traction Company.

May 24, 1899—Incorporation of Chicago Union Traction Company.

June 1, 1899—Leases from North and West Chicago Street Railroad Companies to Chicago Union Traction Company.

Dec. 18, 1899—Appointment of Street Railway Commission.

Dec. 17, 1900—Report of Street Railway Commission.

May 20, 1901—Committee on Local Transportation created.

Dec. 11, 1901—First report of Committee on Local Transportation.—Outline ordinance.

1901—Report of Civic Federation on street railways.

Apr. 1, 1902—First vote on municipal ownership.

Nov. 19, 1902—Arnold report.

Jan.-

Feb. 1903—Negotiations for franchise renewal.

May 18, 1903—Mueller law approved by Governor Yates.

Apr. 22, 1903—Receivers appointed for North and West Side Companies.

Apr. 5, 1904—Adoption of Mueller law by City of Chicago.

Apr. 5, 1904—Second vote on municipal ownership.

May 28, 1904—Judge Grosscup rendered opinion on ninety-nine year act.

Aug. 24, 1904—Tentative ordinance reported.

Apr. 4, 1905—Vote by people on tentative ordinance.

Apr. 4, 1905—Third vote on municipal ownership.

July 5, 1905—"Contract" plan of Mayor Dunne submitted to Council.

Dec. 4, 1905—Settlement ordinance reported to Council by majority of Committee on Local Transportation; minority recommended ordinance for Mueller certificates and for municipal operation.

Apr. 3, 1906—Popular vote authorizing issue of $75,000,000 Mueller certificates; municipal operation lost; fourth vote on municipal ownership.

Apr. 27, 1906—Werno letter.

Jan. 15, 1907—Settlement ordinances reported to Council.

Feb. 4, 1907—Settlement ordinances passed subject to approval of voters.

Feb. 11, 1907—Veto of settlement ordinances; passed over Mayor's veto.

I

THE CITY OF CHICAGO

The City of Chicago was incorporated by special act of the Legislature on the 4th day of March, 1837. The territory included in the new City was by legal description and did not conform throughout to the streets as regularly laid out. Practically, however, the City limits were Twenty-second street on the South, Wood street on the West and North avenue on the North. On February 16th, 1847, extensions were made to the West and North, the Southern limits remaining as before. On February 12th, 1853, by act of the Legislature, the City was divided into three divisions, South, West and North, and the City limits were fixed at Thirty-first street on the South, Western avenue on the West and Fullerton avenue on the North. These were the boundaries in 1858 when the ordinance from which originates the present Street Railway System was passed.

The growth of the City and the manner of its development was influenced largely by its peculiar topographical situation. On the East the Lake Shore curving broadly inward precluded its extension in that direction. The course of the Chicago river and its branches formed three natural divisions of the territory and these were the cause of the similar geographical divisions of the City into South, West and North Divisions. The Lake Shore, the South Bank

of the Chicago river and the East Bank of the South Branch, forming a rectangular area of about a square mile, fixed the boundaries of the business district. Township and ward lines followed the course of the river and its branches.

A glance at the map of Chicago shows how the river and lake determined the location of roads in an early day. From the North along the Lake Shore is North Clark street, formerly Green Bay road; on either side of the North branch are Clybourne avenue and Milwaukee avenue, formerly Northwestern Plank road; and on either side of the South branch are Blue Island avenue and Archer avenue, formerly Archer road, or in an earlier day, as described in the official language of that day "the nearest and best way to the house of Widow Brown on Hickory creek."

This deference to the "water barrier" was without doubt the easiest, and in some cases the best solution of the problems of that day. With no bridges it was better not to be obliged to cross the river. Moreover, the townships and wards were entities in themselves and only the greatest inconvenience could arise by cutting off one portion from another. The roads, built as a means of communication with the surrounding country, led direct to the business district. As the City grew, cross roads and bridges could be built wherever it seemed desirable and thus all restrictions to free intercourse would be overcome.

But in planning for a street car system, a new situation was presented. The lines of street car travel were necessarily localized and the patron could not at will change his course toward a desired destination. The service was furnished by a stranger and the patron was subject to the conditions of the service. It fol-

lows that the railway lines should have been so placed and the conditions of service of such nature as best to accommodate the entire community and to meet the needs not only of the moment, but also those of the future. It was desirable not only that the population of that day should reach the business district but also that future populations should be able to pass between distant points without being obliged necessarily to traverse the business district and pay double fares.

A system meeting all of these requirements was impossible without considering the City in its entirety. Just as the Township or Ward stood as a unit, so the City in matters peculiar to itself should have stood as a unit. The river which was made a convenience in locating the boundaries of townships and wards, should have been regarded in the plan for a traction system as an obstacle to be overcome, not deferred to.

However, the divisional idea was strongly entrenched; the enterprise was new and its future could not be predicted; no assistance could be had from contemporaneous experience, since the activity itself was in its infancy. From our present viewpoint, it is manifest that the maintenance of a unified service, covering the entire City, should have been the dominant and controlling idea, to which all other considerations, such as rates of fare, compensation to the City, profits to the Companies above a fair rate, should have been subservient. Had this idea prevailed in the beginning, the present situation would be relieved of many embarrassments.

II

EARLY ORDINANCES

The population of the City increased from about 4,200 in 1837 to about 30,000 in 1850 and about 80,000 in 1855. The need of some means for the interurban transportation of passengers became urgent. Following the methods then in vogue, two omnibus enterprises were projected in 1853, one by Frank Parmalee and Company and the other by M. O. and S. B. Walker. About the same time street railways began to come into use in the principal cities of the country and attracted the attention of the leading citizens of Chicago.

The first action taken by the City looking to the development of a street railway system was the passage of an ordinance on the 4th day of March, 1856, which granted to Roswell B. Mason, Charles B. Phillips and such persons as might thereafter become associated with them, the right to lay a single or double track upon the principal streets of the South and North Divisions "to the (then) present or future limits of the City." The right to operate the railways so authorized extended for a period of twenty-five years from the passage of the ordinance and thereafter until the City should elect to purchase and should pay for the entire equipment used in the construction and operation of the railways. The purchase price was to equal a sum of money, the interest on

which at six per cent should equal the net earnings of the railways for the year next preceding the date of purchase. The ordinance provided that the rate of fare for any distance less than a mile should not exceed five cents and for any distance more than a mile within the City limits, it should not exceed ten cents. No provision was made for compensation to the City. None other than animal power could be used.

Nothing was ever done under this ordinance. On July 19, 1858, another ordinance passed the Common Council, granting to Henry Fuller, Franklin Parmalee and Liberty Bigelow, permission to construct and operate a horse railway on certain streets in the South and West Divisions "to the (then) present and future limits of the City." This ordinance was vetoed by Mayor John C. Haines on the ground that in providing for the purchase by the City of the equipment of the railways at the expiration of twenty-five years, it did not clearly define the legal situation of the City at the end of the period and that in case the City did not so purchase, then the grantees became possessed of a perpetual right for all the territory covered by their tracks. A significant feature of this ordinance is that it gave the passenger the right to ride for a single fare of five cents for any distance within the territory covered by the grant, that is, within the South and West Divisions.

Another ordinance reported to the City Council, but not passed, sought to grant to William B. Ogden and others under the name of the North Chicago City Railway Company, the right to construct and operate a horse railway in certain designated streets in the North Division. The life of this proposed grant was

to be for twenty-five years, or during the existence of the Company.

Ordinance of August 16, 1858. On August 16, 1858, the Common Council passed an ordinance from which originates the rights, since enlarged and modified, under which the principal systems of railways in the South and West Divisions were constructed. By this ordinance Henry Fuller, Franklin Parmalee and Liberty Bigelow acquired rights, subsequently affirmed to them by the Legislature under the name of the Chicago City Railway Company, to certain streets in the South Division; by this ordinance, also these same persons acquired rights to certain streets in the West Division which thereafter were passed by deed of their successor, the Chicago City Railway Company, to the Chicago West Division Railway Company.

This ordinance of August 16, 1858, authorized the above named persons to lay a single or double track for a street railway along the following streets:

South Division. "Commencing on State street at the South side of Lake street, thence South to the present City limits (31st street). Also commencing on State street at the junction of Ringgold place (22nd street), thence on Ringgold place to Cottage Grove avenue, thence on Cottage Grove avenue to the (then) present limits of the City of Chicago (31st street). Also commencing on State street, at the junction of the Archer road; thence along Archer road to the (then) present limits of the City (31st street)."

West Division. "Also commencing on State street, at the intersection of Madison street and extending along said Madison street to the (then) present City limits (Western avenue)."

The ordinance provided among other things that

the cars should be operated by animal power only; that the rate of fare for any distance should not exceed five cents; that the grantees should pay one-third the cost of grading, paving, macadamizing, filling or planking on the streets or parts of streets on which the tracks were laid and should keep such portions of the streets as were occupied by the railways in good repair during their occupancy.

The life of the grant extended for the full period of twenty-five years and thereafter until the Common Council should elect, by order for that purpose, "to purchase said tracks of said railways, cars, carriages, station houses, station grounds, depot grounds, furniture and implements of every kind and description, used in the construction or operation of said railways, or any of the appurtenances in and about the same, and pay for the same" a sum of money to be determined by three commissioners.

It was claimed, however, that the Common Council had no power to grant the use of the streets for street railway purposes. Such power, it was said, rested only with the Legislature. An injunction was issued by the Circuit Court against the laying down of tracks under the ordinance and the promoters of the railway applied to the Legislature for a charter and for a grant to the streets.

Authorities: Ordinance of March 4, 1856, Municipal Laws of Chicago, 1856, Thompson, p. 161; of July 19, 1858, Chicago Daily Press and Tribune, July 21, 1858; of August 16, 1858, Special Ordinances of Chicago, 1898, p. 1042.

III

INCORPORATION OF THE COMPANIES—ACTS OF FEBRUARY 14, 1859, AND OF FEBRUARY 21, 1861

The Chicago City Railway Company. On the 14th of February, 1859, Franklin Parmalee, Liberty Bigelow and Henry Fuller, grantees under the ordinance of August 16, 1858, and David A. Gage, secured from the Legislature for the period of twenty-five years, a charter for the Chicago City Railway Company. The act of incorporation established in the new Company all those rights and privileges sought to be bestowed upon its predecessors by the ordinance of August 16, 1858. It affirmed the right of the Company to the use of the streets named in the ordinance, subject to the terms and conditions therein contained. It further authorized the use of such other streets for railway purposes in the South and West Divisions as the Common Council might from time to time designate, and upon such terms and conditions as the Common Council might prescribe. Following somewhat closely the language of the act, the Company was authorized to construct and operate a single or double track railway in the City of Chicago and in, on, over and along such street or streets, highway or highways, bridge or bridges, river or rivers, within the then present or future limits of the South and West Divisions of the City, as the Common Council of the City had previ-

ously authorized the incorporators named to do, or might thereafter authorize the corporation to do and in such manner and under such terms and conditions and with such rights and privileges as the Common Council had or might by contract prescribe. The act itself did not name any streets on which railway lines might be constructed, the designation of the streets and the terms and conditions of their occupancy being left to the Common Council.

The act further authorized the Company under the law of Eminent Domain to extend its railways to any point or points within Cook County; also with the assent of the Supervisor of any township to lay down and maintain its lines over and along any highway in the township.

Incorporation of the North Chicago City Railway Company. Section ten of the same act provided for the incorporation of the North Chicago City Railway Company. All the grants, powers, privileges, immunities and franchises conferred upon, and all the duties and obligations required of the incorporators of the Chicago City Railway Company for the South and West Divisions of the City and County were thereby conferred upon and required of William B. Ogden, John B. Turner, Charles V. Dyer, James H. Rees and Valentine C. Turner by name of the North Chicago City Railway Company for the North Division of the City and County. No streets were named in the act, the designation thereof being left to the Common Council.

Incorporation of the Chicago West Division Railway Company. The Chicago West Division Railway Company was incorporated for the term of twenty-five years by Act of the General Assembly on the 21st

of February, 1861. Edward B. Ward, William K. McAllister, Samuel B. Walker, James L. Wilson, Charles B. Brown and Nathaniel P. Wilder were the incorporators. This company was expressly prohibited by its charter from constructing or using any tracks in the North Division of the City, except with the written consent of the North Chicago City Railway Company; it was expressly authorized to acquire, unite and exercise any of the powers, franchises, privileges or immunities conferred upon the Chicago City Railway Company by the Act of February 14, 1859, and by any ordinance of the Common Council of the City, upon such terms and conditions as might be arranged between the two railway corporations. The written consent of the board of directors of the Chicago City Railway Company was necessary before it could exercise any power as to the streets of the South or West Divisions of the City in which that company had acquired the right to lay tracks.

On the 30th of July, 1863, the Chicago West Division Railway Company acquired by deed of conveyance, for the sum of three hundred thousand ($300,000) dollars, from the Chicago City Railway Company all the latter's rights in and to the streets of the West Division of the City, together with the construction and certain operating equipment already in use in the streets where tracks had already been laid; also the right to construct and operate railways in certain designated streets in the business district of the South Division.

In the agreement leading up to the above mentioned deed, each of the interested corporations pledged itself that it would not "either directly or indirectly, be concerned or interested in any railway or the

running or operating of any railway, or the profits or income of any railway in, upon, or along the streets or any of them" in the other's territory, and that it would not without the request, or by the permission of the other, "establish, procure or construct, or in any manner encourage or favor the establishment or construction of any railway or railways" in any of the streets of the other's territory. They mutually pledged themselves that they would "when requested so to do, in all things reasonable and proper, aid and assist each other in the management and direction of their respective interests"; that they would "at any and all times so far as (could) can be done without prejudice to their several interests, regard and act with reference to the interests of the other, and that each shall and will (should and would) use its influence for the benefit of the other as well as for their mutual advantage in procuring all such rights, privileges and immunities, as they may (might) respectively deem necessary for their success and profit."

So by legislative enactment and the above agreement, these three corporations became firmly intrenched in their respective territories, and the fact of Divisional ownership and operation of Street Railways was fastened upon the City. The pledges to restrict their operations to their own territory and to act for their mutual success and profit, have been faithfully kept, not always to the benefit of the public. The ordinance of August 16, 1858, and the act of February 14, 1859, which authorized Bigelow and his associates and their successors, the Chicago City Railway Company, to construct railways in the South and West Divisions of the City and which provided for a single fare of five cents for any distance, contained

the promise of a unified service at least for these two divisions, a promise rendered void when the two companies divided the territory and disregarded the provision for a single ride for five cents for any distance within the city limits.

Authorities: Act of February 14, 1859, Private Laws of Illinois, 1859, p. 530; of February 21, 1861, Special Ordinances of Chicago, 1898, p. 1315.

IV

ORDINANCES PRIOR TO FEBRUARY 6, 1865

As before noted the grants to the Companies extended only to the right to construct and operate their railways in certain prescribed territory for the period of twenty-five years, the naming of the particular streets and the terms and conditions incident thereto were to be determined by the Common Council of the City. The life of the Companies was fixed for that period of time by the acts of incorporation and all relations between the City and the Companies were terminable at the will of the City at the end of the period.

Accordingly the Common Council, upon application of the Companies, granted permission by ordinance from time to time to extend the railway lines in each division. By ordinance of May 23, 1859, the Common Council granted to the Chicago City Railway Company the right to occupy for street railway purposes certain streets named in the ordinance "during all the term in the act of February 14, 1859, specified and prescribed." The ordinances of March 14 and of March 28, 1864, to the Chicago City Railway Company were made subject to the conditions of the ordinances previously passed concerning the Chicago City Railway Company or the Chicago West Division Railway Company. Ordinances of November 18, 1861, and of August 22, 1864, contained no express provisions as to time limit and did not refer back to previous ordi-

nances in which the time limit is expressed; but this omission has since been considered only as an exception to a well defined policy.

The ordinances of March 28, 1864, and of July 11, 1864, to the Chicago West Division Railway Company contained no express provision as to time limit, but the grant was made subject to the conditions and regulations concerning other railway tracks in the City of Chicago, and the ordinance of August 17, 1864, to the same company made the grant subject to the ordinances then in force respecting railways in the South and West Divisions.

The ordinance by which the North Chicago City Railway Company first secured the right to occupy specific streets was passed May 23, 1859. The rights and privileges granted by this ordinance were to "continue and be in force for the benefit of said company for the full term of twenty-five years and no longer." An ordinance supplemental to the above was passed December 17, 1860, and was presumably intended to carry with it the same limitation as to time. Other ordinances to the same company passed respectively on the 18th of January, 1864, and the 11th of August, 1864, provided that the grants therein named should be subject to the rules, limitations and restrictions, conditions, rights and privileges mentioned in the ordinance of May 23, 1859.

As will be observed the grants to the Chicago City Railway Company and to the Chicago West Division Railway Company in general refer back to the ordinance of August 16, 1858, and to the act of February 14, 1859, in which the life of the franchise was fixed at twenty-five years and thereafter until purchase by the City. The ordinance of May 23, 1859, to the

North Chicago City Railway Company fixed the period of its duration at "twenty-five years and no longer" and all subsequent ordinances to that company prior to February 6, 1865, when the so-called ninety-nine year act was passed, refer back specifically to this provision as one of their essential conditions. On the surface and with evident good faith on the part of the City, it appears that the City and the Companies were acting harmoniously together for the development of a street car system under well defined relations terminable at the end of twenty-five years; but in the secret councils of the Companies, plans were being formed designed to nullify the power of the City to act at the end of that period and to fasten upon the people and perpetuate a century of company domination.

Authorities: Ordinances in preceding Chapter are found in Special Ordinances of Chicago, 1898, pp. 1046 to 1059, 1415 to 1419 and 1317 to 1325.

V

THE NINETY-NINE YEAR ACT

By the acts incorporating the Companies the life of the Chicago City Railway Company and of the North Chicago City Railway Company was for twenty-five years from February 14, 1859, and that of the Chicago West Division Railway Company was for twenty-five years from February 21, 1861. Accordingly it was a matter of surprise to the people of Chicago, when in the Winter of 1865 and while the charters of the Companies still had nineteen and twenty-one years to run, an amendatory act was introduced in the State Legislature, substituting the period of ninety-nine years for that of twenty-five in the original acts of creation and thus extending the lives of the Companies and presumably their rights in the streets for that period of time.

On the 4th of January, 1865, House Bill number 66, "An Act Concerning Horse Railways in Chicago" was introduced in the House of Representatives of the General Assembly by Andrew H. Dolton, representative from the 60th Legislative district, Cook County. The bill was read twice and referred to the Committee on Banks and Corporations of which Horatio C. Burchard of Stephenson County was chairman. On the 16th of January, Mr. Burchard reported from the Committee as a substitute for the bill originally introduced, the form which afterward became a law and

which has become known in the history of Illinois legislation as the Ninety-nine Year Act. It was read a first time, the rules suspended, read a second time and ordered to a third reading. Four days later, January 20, 1865, it was read a third time and passed by a vote of 66 to 3, only William Jackson of Cook County, John McDonald of Calhoun County and John Miller of LaSalle County voting against it.

The haste with which the bill was rushed through the House gave the people of Chicago no opportunity for concerted opposition. Up to that time its existence does not seem to have been generally known and outside of the interested companies, but few knew its import except in the vaguest way. On the day following the vote in the House the Chicago Tribune said: "The Horse Railway perpetual charter went through the House on a hard gallop, or as one might say, on a free pass."

It was stated at a meeting at Metropolitan Hall that a number of private letters had been written the representatives from Cook County and that a petition protesting against the bill had been circulated to a limited extent on the West side and forwarded to Representative Ansel B. Cook with the request that it be presented to the House when the bill came up for passage. The petition was not presented and Mr. Cook voted in favor of the bill. Afterwards Mr. Cook explained that he was absent from the House in conference with a visiting committee from Chicago on another matter when the bill was called up, and when he returned it was too late to present the petition.

The Metropolitan Hall meeting was held Tuesday evening, January 24, 1865. It was largely attended and the leading citizens of the City were present. It

passed resolutions in strong protest against the provisions of the bill, censured the representatives from Cook County who voted for it and tendered the thanks of the meeting "to our Representative, William Jackson, for his incorruptible and manly opposition to the railway swindle." A committee of one from each ward was appointed to circulate a remonstrance against the bill and to forward it to Springfield. Another committee, consisting of George H. Foster, Col. H. W. Eldridge and Enos Ayres, was appointed to go to Springfield and lay the resolutions of the meeting before the Senate. This committee telegraphed that it was on the way, but before it reached Springfield the Senate called up the bill and in an unusual and most unprecedented way, rushed it to its passage.

The bill was reported to the Senate from the House on the 23rd day of January, 1865. On the 25th, Mr. Francis A. Eastman, Senator from Cook County, called it up for consideration. It was read a first time, the rules suspended, read a second time, then a third time and passed by a vote of nineteen to four, John B. Cohrs, Tazewell County, Andrew W. Metcalf, Madison County, Daniel Riley, Randolph County and Joseph D. Ward of Cook County, voting in the negative. During its progress through the Senate, Mr. Ward offered a number of amendments, all of which were rejected. He then sought to have it referred to a committee, and failing in that, to have its consideration postponed until the following day, but without success. Mr. Eastman who steered the bill through the Senate and Mr. Ward who opposed its progress, were the entire delegation in the Senate from Cook County and each has claims upon the memory of the people of Chicago, but obviously for different reasons.

The constitution of 1848, then in force, had this provision:

"Section 23. Every bill shall be read on *three different days* in each House, *unless in case of urgency,* three-fourths of the House where such bill is so depending shall deem it expedient to dispense with this rule."

The franchises had nineteen years yet to run. What, then, was the case of urgency? What impelled the House to dispense with the rules and have two readings on one day and what controlling necessity required three readings in the Senate and the passage of the act on the same day?

Of the manner in which the bill passed the Senate, the Chicago Tribune, January 28, 1865, had this to say:

"THE HORSE RAILROAD SWINDLE

"We have already pointed out the unparliamentary and disgraceful haste in which the Horse Railroad Swindle was rushed through the Senate. The desire for dispatch evinced by those employed to push it through reminds us of a familiar dialogue said to have occurred in a hen-roost:

"First Thief (handing to comrade a feathered biped): 'I say, friend, do you think this exactly right?'

"Second Thief (shoving it into his basket): 'That is a grave moral question which we haven't time to consider. Hand along another pullet.'

"The members of the Legislature, oppressed by the consciousness that there were only nineteen years in which to pass the bill, and afraid that the people of Chicago might so mistake their true interests as to oppose it, were as anxious to get the pullet into their

basket as if the scene had been in a neighbor's hen-roost and they were taking their neighbor's property. It was hardly expected, therefore, that the Legislature should stop to investigate the grave moral questions when the main point was to 'hand along another pullet.'"

The people of Chicago had not believed it possible that the Legislature would do so inequitable a thing as proposed in the ninety-nine year act; but after the bill had passed the House almost unanimously and the Senate without waiting to hear the committee which it knew was coming to present the City's remonstrance, also passed it, they became thoroughly aroused and set about seriously and earnestly the task of securing the Governor's veto; and although the majorities in the House and Senate, if they remained unchanged, were sufficient to override the veto, it was believed that upon better information enough votes could be changed to defeat the measure. Accordingly, a call for a Mass Meeting to be held at Bryan Hall on the evening of January 28, 1865, was issued.

The meeting was large and enthusiastic. An attempt had been made to pack it with conductors, drivers and other employees of the Companies. Between two and three hundred of these men were brought in in squads of from half a dozen to a dozen each, under railroad stockholders, who seated them in the front seats, occupying two or three rows across the entire width of the hall; but when the hour for the meeting arrived, the people began to pour in until two thousand citizens filled all the available space in the hall and so enthusiastic and overwhelming was the condemnation of the bill that little was heard from

the opposition. The meeting was addressed by Wirt Dexter, E. C. Larned, Thomas B. Bryan and others. Resolutions condemning the measure and requesting the Governor to veto it, were passed and a large committee consisting of Wirt Dexter, Thomas B. Bryan, J. L. Scripps, L. B. Otis, George W. Gage, C. G. Wicker, John Sears, George F. Foster, James H. Rees, Peter Page, P. W. Gates, Grant Goodrich, E. C. Larned, J. W. Waughop, Fred Tuttle, R. M. Hough, Mayor Sherman, Mancel Talcott, Col. C. G. Hammond, Dr. J. H. Foster, L. P. Hillard, John G. Rogers, E. H. Haddock and A. C. Hesing, was appointed to go to Sprinfield and lay the views of the meeting before the Governor. A petition was circulated and in one day's time 9,000 names were secured and with this the committee left for Springfield on the 30th.

The work done by the committee was effective. On February 4 Governor Oglesby returned the bill to the House without his approval. The veto message accompanying it was clear and forceful. In Chicago a meeting had already been called for that evening in Metropolitan Hall to take further steps in opposition to the bill. The news of the veto reached the City in the afternoon and the meeting was one of great rejoicing. Thomas B. Bryan was referred to as the hero of the meeting. Another Committee was appointed to go to Springfield to continue the work among the legislators. The committee, however, was not needed. The veto message reached the House on Saturday, February 4; on the following Monday, February 6, both the House and the Senate "in the shake of a lamb's tail" passed the bill over the Governor's veto. In the House the petition with its 9,000 names in protest was presented by Representative

George Strong of Cook County and was promptly laid on the table. The vote in the House stood 55 to 22. In the Senate it stood 18 to 5, David K. Green of Marion County; James Strain of Warren; Andrew W. Metcalf of Madison; Daniel Riley of Randolph and Joseph D. Ward of Cook County voting in the negative.

Of the Cook County delegation, Nathan W. Huntley and Andrew H. Dolton in the House voted to pass the bill over the Governor's veto, and Ansel B. Cook, William Jackson, Edward S. Isham and George Strong against it; in the Senate Francis A. Eastman voted for the bill and Joseph D. Ward against it.

Authorities: Chicago Daily Tribune; House and Senate Journals, 1865, for House Bill No. 66.

VI

PROVISIONS OF THE NINETY-NINE YEAR ACT AND OBJECTIONS THERETO

The ninety-nine year act, passed February 6, 1865, amended Sections one and two respectively of the acts of February 14, 1859, and of February 21, 1861.

Section one of the act of February 14, 1859, creates and constitutes certain persons named in the act "a body corporate and politic by the name of the Chicago City Railway Company for the *term of twenty-five years, with all the powers and authority incident to corporations* for the purposes hereinafter mentioned."

Section one of the act of February 21, 1861, creates and constitutes certain parties named in the act "a body corporate and politic by the name of the Chicago West Division Railway Company *for the term of twenty-five years, with all the powers and authority pertaining to corporations* for like purposes."

Section one of the ninety-nine year act amends each of the above sections of the acts of which they are a part so that all the words therein respectively after the word "Company" read as follows: "*For ninety-nine years, with all the powers and authority hereinafter expressed or pertaining to corporations for the purposes hereinafter mentioned.*"

The amendment to the second section of each of the acts of February 14, 1859, and of February 21, 1861, respectively, is effected by substituting therefor the second section of the ninety-nine year act. This latter is as follows:

"That the second section of the first act above referred to by its title (act of February 14, 1859), and which section is included in and made a part of the act secondly above referred to by the title thereof (act of February 21, 1861), be and the same is hereby, as to both of said acts, so amended as to read as follows, viz.: The said corporation is hereby authorized and empowered to construct, maintain and operate, a single or double track railway, with all necessary and convenient tracks for turn-outs, side tracks and appendages, in the City of Chicago, and in, over and along such street or streets, highway or highways, bridge or bridges, river or rivers, within the present or future limits of the South and West Divisions of the City of Chicago, as the Common Council of said City have authorized said corporators or any of them or shall from time to time, authorize said corporations, or either of them, so to do, in such manner and upon such terms and conditions, and with such rights and privileges, immunities and exemptions, as the said Common Council has, or may, by contract with said parties, or any or either of them, prescribe; and any and all acts or deeds of transfer of rights, privileges or franchises, between the corporations in said several acts named, or any two of them, and all contracts, stipulations, licenses and undertakings, made, entered into or given, and as made or amended by and between the said Common Council and any one or more of the said corporations, respecting the location, use or exclusion of railways in or upon the streets, or any of them, of said city, shall be deemed and held and continued in force during the life hereof, as valid and effectual, to all intents and purposes, as if made a part, and the same are hereby made a part, of said several

acts; Provided, that it shall be competent for the said Common Council, with the written consent or concurrence of the other party or parties, or their assigns to any of said contracts, stipulations, licenses or undertakings, to amend, modify or annul the same. But said corporations shall not, or any or either of them, be liable for the loss of any property or thing carried on said railways, kept in and under the care of the owner, his servant or agent; Provided, that any contract hereafter made by the Common Council of the City of Chicago with either of the corporations referred to in this act, for a higher rate of fare than five cents, shall be subject to modification or repeal at any regular meeting of said Common Council, by a majority vote of all the aldermen elected, or by the general assembly of the State of Illinois."

Section third has special reference to the Chicago and Evanston Railroad and has no bearing on the present situation; Section fourth authorized each of the corporations to acquire and own real estate and Section fifth declared the act a public one.

There were several features to the bill that rendered it particularly obnoxious to the people of Chicago:

1st. It extended the life of the corporation from twenty-five to ninety-nine years.

2d. The ordinance of August 16, 1858, authorized the City to purchase the railway equipment at an appraised value at the end of the twenty-five year period. The act was supposed to postpone this right of purchase to the end of the ninety-nine year period.

3d. Previous to its passage there were numerous contracts in the form of ordinances and amendments thereto between the City and the Companies, and also certain contracts between the Chicago City Railway

Company and the Chicago West Division Railway Company, all of which were affirmed and made a part of this act during the life thereof and hence presumably continued in force for the period of ninety-nine years. These ordinances and contracts were not exhibited before the Legislature and the legislators could not by any physical possibility have informed themselves of their provisions so as to have had an intelligent conception of what they were doing.

4th. The ordinance of August 16, 1858, affirmed by the act of February 14, 1859, provided that the rate of fare for a single ride should not exceed five cents; this act in effect prohibited a reduction below five cents without the consent of the Companies. It also permitted a majority of a quorum of the Common Council to increase the fare above five cents, but such increase could not be modified or repealed without a majority of all the aldermen elected or by the General Assembly of the State of Illinois. As pointed out by Governor Oglesby in his veto message, nine Aldermen as the Common Council was then constituted could raise the fare, but it would require seventeen to repeal the increase.

The attitude of the people toward this bill, the indignation aroused by its proposal and passage and the earnestness with which it was opposed can scarcely be realized. And, indeed, this would not be true history if it did not record the prevailing belief of that time that processes and methods other than intellectual were used to convince the Legislators of the utility and righteousness of the act. There seem to have been heart to heart and hand to hand talks with the agents of the Companies. The policy of the Companies, then inaugurated and to a recent time persistently followed,

of ignoring the wishes and rights of the people of Chicago, the resort to indirect and questionable methods to gain unmerited ends, the imposition upon the City of the cumbersome divisional system with its double fares and inefficient service and the constant and continuing evasion of obligations assumed by contract and such as are imposed by the conditions of good service may well be considered responsible for the subsequent insistent demand for the surrender of ill-gotten and abused privileges.

EXTRACTS FROM THE PRESS

"These Companies now ask the Legislature to strike out the words 'twenty-five' and insert the words 'ninety-nine' in lieu thereof. In other words, they ask the Legislature to extend their franchises seventy-four years longer than the City agreed to grant them and they agreed to accept them. It is not affirmed that they are dissatisfied with their contract as it stands. On the contrary, there is pretty good evidence that they would not part with their existing privileges for one hundred cents on the dollar. * * * Their request for an extension of their charter then is simply asking a gift. Is it such a gift as the people can afford to bestow upon them? We think not. We believe that these franchises ought to enure at their legal termination to the benefit of the City. * * * For the present, it is as obviously for the interest of Chicago to keep these franchises in her own hands as it is for the interest of the companies to get them away from her."—*Chicago Tribune,* January 17, 1865.

"Not one of these roads will sell out at cost with interest at ten per cent per annum added or anything

like it. If they would abundance of parties stand ready to release them of their bagains. * * * They have run but six years—these their worst—and yet after watering their stock and extending their routes, are able to pay fair dividends. Nineteen years of profit increasing every year in arithmetical ratio were before them. When they began our population was 80,000. During the past six years it has increased to 160,000. During the next six years at the same rate it would amount to 240,000 and before the nineteen years had expired to 500,000. If these railroads are so powerful now that they can whirl a bill through the Legislature without asking the consent of the people of Chicago, is it evident that these railroad companies are too poor to pay expenses? Even were the consent of the people of Chicago asked, * * * the 160,000 people who now make up Chicago, would be unwilling to lay unforeseen and unknown burdens on the backs of the half million or million of people who will compose the City after the expiration of nineteen years from this time. These monopolies would then have a revenue which if properly taxed at one cent each fare, would pay the expenses of our entire common school system, if not of the City Government and give us a City measurably free from taxation. * * * But if instead of paying a fair tax to the City, they maintain a 'secret service' or corruption fund, to buy up the votes of future Legislatures and Councils when needed, as all great monopolies will whose profits run beyond their deserts, the same money which ought to educate and elevate is made to corrupt and demoralize the community."

* * * * * * *

"Is it wise to grant a Camden and Amboy monopoly,

whose scepter of power will defy the public, the Common Council and the Legislature? Will not those who rule the Legislature now to extend their charter, be able to rule it by the same arguments hereafter to maintain their fares? If the Legislature is faithful to them in small things, will they not be faithful also in great?"—*Chicago Tribune,* January 23, 1865.

"But these are minor matters. We ask the members of the Legislature again whether they desire to see any portion of their fellow citizens handed over to the mercies of a great monopoly for ninety-nine years to be dealt with according to their pleasure. These Companies are in their infancy, but already they signify their intention to put this man up and that man down according as their behests are obeyed or disobeyed. (See Mr. Larned's remarks in another column.) If these things be done in the green tree, what shall be done in the dry? Every man in the General Assembly, or out of it, who has one spark of self-respect, one particle of love for the institutions under which we live, will meet these threats with defiance, and will aid in defeating any measure which contains the seeds of such domineering and dangerous power."—*Chicago Tribune,* Jan. 30, 1865.

"Let the Legislature pass no charter without seeing to it that sure provisions are made for its alteration whenever the public good requires it. The members were not sent there to create great corporations, clothe them with special privileges and power and start them out to grow fat and insolent by preying on the public forever. However trite it may seem, it is the duty of representatives to guard and protect, not fleece the people, and they will be held responsible for its discharge. They have no right to give away public fran-

chises because rich corporations are after them. If they do it they will be made to smart for it. And we can tell them that when they are so sunk in stupidity or so brazen-faced in corruption as to extend and make perpetual the charter of a corporation, which in the beginning was so liberal as to be a piece of folly, and which has made its holders suddenly rich, they do an act that stinks in the nostrils of honest men."—*Chicago Tribune,* January 30, 1865.

"A word to the horse railroad managers may not be amiss. They are pressing this bill with intemperate zeal and to their own hurt. Many of them are gentlemen of high respectability but they may part with their stock tomorrow or the next day and they cannot sell their respectability with it. We ask them, whether it is wise to provoke the people to make war upon them? * * * If any person believes that the people will forget the thing in thirty days, that person is mistaken. We have warned these gentlemen that such an experiment will prove a losing one in the end. If they will persist in the wrong let them remember that they began the war and that they are entitled to its fruits. If they believe the dividends will be more regular with the people hostile to them than with the same people friendly, they are mistaken. Honesty is the best policy for horse railways no less than for individuals."—*Chicago Tribune,* February 1, 1865.

FROM GOVERNOR OGLESBY'S MESSAGE VETOING THE BILL

"By the 10th and 11th sections of said ordinance (August 16, 1858) it was provided that at the expiration of twenty-five years the said City of Chicago

should have the right to purchase the entire railway property of said corporation at an appraised value in the manner therein specified. The manifest effect of the provisions of the act now under consideration extending the duration of the term granted from twenty-five to ninety-nine years, is also to extend the time when this agreement of purchase and sale shall take effect for the like period." * * * "For the Legislature now to interfere, and without the consent of the City of Chicago extend the time when the agreements of said contracts are to be performed, would in my judgment, be manifestly to impair that contract in one of its most material provisions."

* * * * * * *

"I cannot be blind to the consideration that the effect of the bill under consideration is to confer upon a private corporation franchises which are claimed to be of great value, without consideration; that petitions signed by a large number of the citizens of Chicago have been presented to me protesting against this measure as one which has been passed without their consent, or that of their corporate authorities, and that it extends the franchise for this long period nineteen years in advance of the term already vested in this corporation, nor can I properly disregard the considerations pressed upon my attention by those who represent the interests of Chicago opposed to this bill, that legislation extending a franchise of this description for so long a term is subject to grave objections."

* * * * * * *

"There can be but one line of such railway upon any street. To vest for ninety-nine years this exclusive right in one mammoth corporation, covering the entire City, is, to say the least of it, a measure of very

doubtful expediency; it tends to embarrass the City of Chicago with questions of irrepealable rights in the public streets existing in a private corporation, and may be the occasion hereafter of much controversy and dissatisfaction."

* * * * * * *

"By a clause of the second section any and all acts or deeds of transfers of rights, privileges or franchises between the corporations named in this act or any two of them, are to be deemed and continued in force the whole term of ninety-nine years and are expressly made a part of said law. The acts and deeds here referred to are not before the General Assembly; their special terms and provisions are unknown. * * * When and how are the public or the Legislators to know what acts or contracts of these corporations have, by this act, become law? And further, the contracts, stipulations, licenses or undertakings now existing between the Common Council and these corporations are restricted from amendment, modification or repeal without the consent of this company. So far as the licenses and undertakings here referred to are matters of contracts or vested rights, the consent of the corporators to their modification is of course essential, and no such proviso would be necessary; but so far as they are not matters of contract but of police regulation or municipal control and supervision, does not this provision put an unwise and unnecessary restriction and limitation upon the municipal authority over this corporation?"

By the sixth section of the city ordinance of August 16, 1858, which was made a part of said act of February 14, 1859, it is provided "That the rate of fare for any distance in said City should not exceed five cents."

This provision gives to the Company a right of which it cannot be legally deprived during the whole extended term of seventy-four years of charging a fare of five cents. It seems unwise in view of the constantly improving methods of travel and the constant tendency towards new and useful discoveries and improvements by which the expenses of such modes of travel may be greatly reduced, to absolutely bind the City of Chicago for so long a term to pay this rate.

"This corporation has still nineteen years in which to maintain this rate of fare. Is it not more consistent with the public interests and especially with those of the poorer classes, that after the expiration of that time the rate of fare shall be left open to all such changes as the condition of affairs at that time shall render desirable. There is a further proviso in the bill that the rates of fare may be increased by a majority of such aldermen as may be present, but shall be subject to no modification or repeal after being so increased, only by a majority of all the aldermen elected or by the General Assembly of Illinois. The practical effect of this may be that as the Common Council is now constituted, nine members may increase the rate of fare, but it would require seventeen to repeal it. I am unable to appreciate this discrimination in the bill in favor of the corporation and against the City. It seems to me that if any difference were considered necessary, it should have been just the reverse of what it now is."

VII

ORDINANCE OF 1883

The City never acquiesced in the ninety-nine year act nor admitted its validity. However, there was no practical way by which the law could be tested. Under the act of February 14, 1859, the franchises had nineteen years still to run and the Companies had undisputed rights, at least in such streets as had been designated by the Common Council for that period of time. None of the legislative grants had specified any streets which the Companies might occupy, and if the Common Council had been sure of its ground, it could have refused from that time forward to name other streets in which tracks might be laid and the Companies would have been restricted in their operations to the streets already designated. This course, however, would have been one of doubtful expediency, as it would have caused great inconvenience to the public and would have retarded the growth of the City. The possibility of any concessions from the Companies would have been too slight to warrant such procedure on the part of the City; furthermore the Companies could have resorted again to the Legislature and doubtless secured what the City denied. It seemed better to wait until the expiration of the twenty-five year period and then take such action as circumstances and conditions demanded.

The Common Council therefore continued to desig-

nate routes over which the Companies might construct and operate their lines. Almost invariably, however, the ordinances naming these routes contained provisions limiting their operation to a short period of time and in many instances expressly refusing to recognize any claims whatever under the ninety-nine year act.

Grants to the Chicago City Railway Company. The twenty-five year period expired in 1884. Prior thereto the only ordinance which does not thus either expressly or by implication refuse recognition of the act is that of November 21, 1870, granting to the Chicago City Railway Company the right to maintain lines in South Clark street between Polk street and Twenty-second street. This ordinance contains no provision whatever as to time limit. On the other hand, the ordinance of December 21, 1874, which authorized lines in Wabash avenue from Twenty-second street to Madison street and in Madison street from Wabash avenue to State street, expressly provided that the passage of the ordinance should not be construed as a ratification by the Common Council of the act of February 6, 1865—that is, the ninety-nine year act. The ordinance of July 31, 1876, to the Englewood Horse and Dummy Railroad Company and the ordinances of March 26, 1877, and of July 9, 1877, to the Chicago City Railway Company limited the period to twenty years from passage, and the ordinance of July 11, 1881, also naming streets in the South Division, expressly limited the period to twenty years from passage or until the City should elect to grant the same to a new grantee and the payment of an appraised value by the new grantee.

Grants to North Chicago City Railway Company. The ordinance of May 8, 1871, granting to the North Chicago City Railway Company, rights in certain streets in the North Division, contained no express provision as to time limit, but made the grant subject to all the restrictions and conditions, rights and privileges mentioned in the ordinance of May 23, 1859, in which the time limit was fixed at twenty-five years from passage. The Company by resolution accepted the ordinance under the condition that the ordinance be construed so that it could use the streets designated for the same length of time as it was then authorized to use North Clark street and that the Common Council assent to such construction. The Common Council assented to such acceptance by the Company with this proviso: "That nothing contained herein, or in the original ordinance, shall be so construed as to give sanction, consent or assent of this Common Council to the ninety-nine year franchise claimed by said railway company, or any other horse railway company, under the act of the General Assembly, entitled 'An Act Concerning Horse Railways in the City of Chicago' passed over the Governor's veto February 6, 1865."

The ordinance of November 20, 1871, also granting to the North Chicago City Railway Company rights in certain streets in the North Division, contains no express provision as to time limit, but makes the grant subject to all the rules, limitations and restrictions prescribed in ordinance of May 23, 1859, in which the time limit is twenty-five years from passage. The ordinance expressly provides that nothing contained therein shall be construed as a ratification by the Common Council of the act of February 6, 1865.

The ordinances of October 26, 1874, and of April 26, 1875, each run until October 1, 1894, and thereafter until purchase of the railway equipment and appurtenances by the City and payment of the appraised value thereof. The ordinances of March 25, 1878, of March 22, 1880, and of October 26, 1881, are each for twenty years from passage.

Grants to Chicago West Division Railway Company. The ordinance of November 13, 1871, to the Chicago West Division Railway Company which granted rights in West Van Buren street between Ogden and Western avenues contained no express provision as to time limit but extends all contracts applicable to the line on Van Buren street East of Ogden avenue as set forth in the ordinance of May 23, 1859, to the line authorized. The time limit in the ordinance of May 23, 1859, is during all the term specified in the act of February 14, 1859, or twenty-five years. The ordinances of August 9, 1875, amended August 12, 1875; of August 26, 1878; of September 9, 1878; of October 14, 1878; of November 29, 1880; of February 7, 1881, and of July 17, 1882, are each to the Chicago West Division Railway Company and contain grants to streets in the West Division for the term of twenty years from passage thereof. The grant made by the ordinance of March 8, 1875, amended April 19, 1875, runs to October 1, 1894, and thereafter until purchase by the City. The ordinances of February 21, 1876, of February 28, 1876, as amended July 10, 1876, are each for twenty years and thereafter until purchase by the City and payment of appraised value. The ordinances of September 25, 1876; of March 26, 1877; of June 24, 1878; of December 23, 1878; of October 20, 1879, are each for

twenty years from passage and thereafter until grant is made by the City to a new grantee. The ordinance of November 27, 1876, contains no express time limit but refers back to the ordinance of September 25, 1876, which contains the time limit of twenty years, dating from the act of February 14, 1859.

The right of purchase by the City, if such right existed, dated from the ordinance of August 16, 1858, and hence accrued in August, 1883. At that time, Carter H. Harrison, Sr., was Mayor, Francis Adams, now Judge of the Appellate Court, was Corporation Counsel and Julius Grinnell, afterward General Counsel for the Chicago City Railway Company, was City Attorney. There was considerable discussion in the city press and by the public and in the City Council as to the rights of the City, the value of the franchises and the claims of the Companies under the ninety-nine year act.

The Committee on Railroads of the City Council referred the matter to the Corporation Counsel for an opinion "As to the right of the City to purchase * * * and whether the City has a right to transfer its reserved privileges of buying to other parties; also whether the railway companies have the right to operate their roads under the ninety-nine year act." In an opinion of considerable length, in which a large number of authorities were cited and discussed, Mr. Adams stated his belief in the validity of the ninety-nine year act and the right of the Companies in the streets under its provisions. The opinion ends with this statement:

"Assuming my conclusions to be correct, they forcibly illustrate the wisdom and foresight of the members of the General Assembly who voted, and the pri-

vate citizens who protested and remonstrated against the passage of the act of February 6, 1865."

In view of this opinion which was concurred in by the City Attorney, it was thought best not to test the act in the courts at that time, and accordingly an ordinance was passed July 30, 1883, extending the ordinances then in force so that all would mature twenty years from the date thereof. The wording of the ordinance, however, was found unsatisfactory and accordingly it was amended August 6, 1883.

In a message to the Council, suggesting the desired changes in the ordinance, Mayor Harrison, referring to his attitude on the ninety-nine year act, used these words:

"No one can be more impressed than I by the enormity of the injustice attempted to be perpetuated upon this City by the General Assembly of the State by the act of 1865, extending the franchises of the several railroad lines affected by it nearly three-quarters of a century. I have always entered upon the discussion of that act with all of my prejudices arrayed against it. But I am forced to yield to the opinion of lawyers far abler than myself, that the act of 1865 is valid. Hampered as are the courts at the present time by decisions which they consider binding upon them, I fear that were the matter to be taken before them at this time, the City would stand a poor show for a favorable decision. There has been, however, a tendency in our higher courts during the past few years to lean somewhat to the people, and to recognize that they have some rights which the Legislatures of the day cannot barter off forever to powerful corporations. Day by day the Dartmouth College decision is becoming less and less sacred. Perhaps in twenty years from now

the courts may be so free that the City may be able to get a hearing which today would be denied. With these views I was anxious to stave off the determination of the question of validity of the act of 1865. This present ordinance leaves the whole matter in abeyance for twenty years and is, therefore, favorable to the City."

There can be little doubt but the postponement of the test in the courts of the ninety-nine year act has worked for the benefit of the City. The courts at that time, to be sure, may have arrived at precisely the same conclusions in interpreting the law as have been reached in the recent decision, although there seems great force in Mayor Harrison's belief that they may not have done so. The trend of judicial decision in the last twenty years has certainly been in favor of the people as against corporations. The great good, however, has come from the advanced ideas and practical knowledge derived from years of agitation and discussion of the traction situation. If at that time the law had been tested and a decision favorable to the City had been reached, a twenty-year franchise would doubtless have been granted with a provision for remuneration to the City similar to that in the ordinance of 1883, and at the expiration of such franchise in 1903, another extension for twenty years would doubtless have been made with little or no provision for improvement in the service or additional compensation. The determined effort on the part of the people by which a high grade of intelligence and honesty was secured in the City Council, the quickened interest and indignant protest aroused by the various attempts of the Companies to secure long term franchises under old conditions of service and the close

study of the problems arising from time to time extending over a period of years by the best minds both in and out of the City Council have been of inestimable value in creating a demand for the best form of service attainable, and in inducing a growing knowledge of the best means by which such service can be had.

Authorities: Ordinances referred to in this Chapter are found in Special Ordinances of Chicago, pp. 1059 to 1086, 1425 to 1437, 1325 to 1362; Ordinance of July 30, 1883, at p. 992; Opinion of Adams, Council Proceedings, 1883-4, p. 77; Mayor Harrison's Message, Council Proceedings, 1883-4, August 6, 1883.

VIII

THE LICENSE ORDINANCE OF 1878

None of the early ordinances contained provision for compensation to the City for the use of the streets. The only conditions imposed upon the Companies were of minor consideration and had reference to the manner in which the road bed should be kept. In some of the ordinances, the Companies were required to pay one-third the cost of grading, paving, macadamizing, filling or planking of the streets occupied by the tracks, and to keep such portion of the streets so occupied in good repair and condition during the whole period of their occupancy; in others, they were required to grade, pave or macadam and keep in repair a portion of the street eight feet in width in case of a single track and sixteen feet in width in case of a double track. In general the requirements were such as the Companies would be compelled to perform in order to keep their roadbed in workable condition and could scarcely be considered as compensation.

In time, the great value of the franchises became apparent and in March, 1878, the City Council passed an ordinance imposing an annual license fee of fifty dollars for each car used. The Companies contested the payment of this fee, and after several years' delay, a decision favorable to the City was rendered by Judge Drummond in the United States Circuit Court. From this decision, the Companies appealed to the Supreme

Court of the United States, but while the appeal was still pending, a compromise was reached which was incorporated in the ordinance of July 30, 1883. By the terms of this compromise, the Companies agreed to pay to the City all the costs incurred in the litigation, the City's attorney's fees and a further sum of money equal to twenty-five dollars per car per annum for each car used by the Companies from April 1, 1878, to August 1, 1883. The ordinance also provided that thereafter the Companies should pay an annual license fee of fifty dollars per year for each car used, and this has since been the basis of compensation on all franchises.

IX

THE OUTLYING TERRITORY—EXTENSION OF LINES BEYOND THE CITY LIMITS—ORDINANCES BY OUTLYING TOWNS AND VILLAGES

The act of February 14, 1859, authorized the Companies to extend their lines to any point or points in Cook County and to that end vested in them the right of Eminent Domain. It also authorized them, with the consent of the supervisors of any township, to construct and maintain railways over the common highways of the township. In accordance with this authority, the companies, from time to time, as population spread beyond the City limits, extended their railways into the outlying towns and villages, consent thereto being first obtained from the local authorities.

To the North lay the territory originally known as the Township of Lake View. On February 16, 1865, this township was incorporated as the Town of Lake View and thereafter on the 16th of April, 1887, the incorporated Town of Lake View became incorporated under the so-called city and village act as the City of Lake View. Accordingly, from 1861 to February 16, 1865, the North Chicago City Railway Company constructed railways in this territory by permission of the Supervisor of the township; from February 16, 1865, to April 16, 1887, by authority of the Board of Trustees of the Incorporated Town of Lake View and

thereafter by authority of the City Council of the City of Lake View.

In 1878 and thereafter, the Chicago West Division Railway Company extended its lines beyond the Western limits of the City into the Village of Jefferson, then incorporated under the city and village act. Authority for these extensions was granted by ordinances passed by the President and Board of Trustees of the Village.

To the South of the City limits lay the Towns of Hyde Park and Lake. The Town of Hyde Park became incorporated March 31, 1861, and on August 13, 1871, the incorporated Town of Hyde Park became incorporated as the Village of Hyde Park under the city and village act. The Township of Lake became incorporated as the Town of Lake on February 28, 1867, and remained such until it became a part of the City of Chicago.

The Chicago and Calumet Horse and Dummy Railroad Company was incorporated for a period of twenty-five years by act of the Legislature on the 5th of March, 1867, and was authorized to locate a Horse and Dummy Engine Railroad upon any streets in Cook County outside of Chicago and east of the west line of State street that should be designated by the Board of Supervisors of Cook County. In accordance with a resolution of the Trustees of the Town of Hyde Park, passed June 1, 1868, the Board of Supervisors of Cook County, June 9, 1868, authorized the laying of tracks by this Company upon 41st street from State street to Cottage Grove avenue; upon State street, Cottage Grove avenue and Indiana avenue from the City limits (39th street) to the then Southern termini thereof respectively; upon 55th and

63d streets from State street to the Eastern termini thereof respectively, and a number of other minor streets. A Horse and Dummy Railroad was constructed upon Cottage Grove avenue and 55th street and was operated as such until November 8, 1886, when the Trustees of the Village of Hyde Park authorized by ordinance the Chicago City Railway Company to substitute cable power for the dummy. It is understood that this line was from its inception under the supervision of the Chicago City Railway Company. Under ordinances passed by the Trustees of the Village of Hyde Park, the Chicago City Railway Company constructed other lines in that territory.

On July 21, 1866, A. Colvin, Supervisor of the original Township of Lake granted authority to the Chicago City Railway Company to maintain and operate railways upon any highways in the township. No highways were designated by name and this authority was revoked by resolution of the Board of Trustees of the incorporated Town of Lake, October 23, 1875. Thereafter, the Company constructed a number of lines in the Town of Lake by authority of its Board of Trustees.

In brief, it may be said that there were two permits issued by the Supervisor of the original Township of Lake View, neither of which contained any provision as to time limit; of nine ordinances of the incorporated Town of Lake View, seven contained no provision as to time limit and two were for twenty years from passage; of two ordinances of the City of Lake View, incorporated under the city and village act, one was for twenty years from passage and the other was without time limit. Of the two ordinances of the Village of Jefferson, incorporated under the city and village act,

one was for eighty-one years and the other for twenty years from passage. The ordinance of the Board of Supervisors to the Chicago and Calumet and Electric Horse and Dummy Railway Company was without time limit. The ordinances of the Village of Hyde Park to the Chicago City Railway Company were, with one exception, for twenty years from passage; those of the incorporated Town of Lake were without time limit.

All of this outlying territory became a part of the City in 1889. The situation was most complex. Instead of a simple unified system, operating throughout the entire City and ministering to the needs of a solidified community, there were three systems, each developed within itself only and with no reference to other portions of the City. Instead of a single source of authority, the franchises had been derived from various bodies, whose right to grant them in some instances at least was of doubtful authority. Instead of a system of franchise-giving by which all franchises would expire at a given time, which indeed may have been contemplated in the ninety-nine year act, there were a large number of franchises, for varying periods expiring at different times, thus rendering a break in the system liable at any time and all overshadowed by the claims of the companies under the ninety-nine year act.

X

THE NEW CITY CHARTER

By the Constitution of 1870 the legislature was prohibited from granting special charters for the incorporation of cities and villages. Accordingly, in 1872, a general law for that purpose known as the city and village act, was enacted. Previously the sole power to authorize the use of the streets of any municipality for street railway purposes was vested in the State Legislature, although it seems that such power might be delegated to the city and village authorities. The city and village act provides that the councils of cities, towns and villages, incorporated thereunder, should have the power "to permit, regulate or prohibit the locating, constructing or laying a track of any horse railroad in any street, alley or public place; but such permission shall not be for a longer time than twenty years." The City of Chicago was incorporated under this act on April 23, 1875, and hence, thereafter its council was authorized, independent of the State Legislature, to grant franchises for street railway purposes for the period of twenty years, but for no longer.

Authorities: Constitution of 1870, Section 22; Hurd's Revised Statutes (1905), City and Village Act, Chapter 24, Sec. 62, Cl. 24.

XI

CHARLES T. YERKES

In 1885 Charles T. Yerkes came to Chicago and immediately became active in traction affairs. He acquired control of a majority of the stock of the companies operating in the North and West Divisions and proceeded to reorganize the systems. On May 18, 1886, he incorporated the North Chicago Street Railroad Company, and on May 24, 1886, secured the execution of a lease between the North Chicago City Railway Company, as lessor, and the North Chicago Street Railroad Company as lessee, by which the former company conveyed to the latter, for the full term of 999 years, its entire property, franchises and rights, all and singular its railroad property, real, personal and mixed, contract rights, ordinance rights, franchises and privileges, of every name, nature and description, except only its right to be and exist as a corporation. On July 19, 1887, he incorporated the West Chicago Street Railroad Company, and on October 20, 1887, secured the execution between the Chicago West Division Railway Company, as lessor, and the West Chicago Street Railroad Company, as lessee, of a lease in all respects similar to the one above described. The Chicago Passenger Railway Company had been organized in 1883 and was operating a number of lines in the West Division with down town terminals. On March 15, 1889, he caused

the execution for the period of fifteen years, afterward extended to fifty years, between that Company, as lessor, and the West Chicago Street Railroad Company, as lessee, of a lease similar to those already mentioned. On April 1, 1889, he secured by lease from the West Chicago Street Railroad Tunnel Company to the West Chicago Street Railroad Company, for a period of 999 years, the exclusive use, possession and control of the Jackson street tunnel, thereafter to be built.

From the dates, respectively, of the above leases, the North Chicago Street Railroad Company, in the North Division, and the West Chicago Street Railroad Company, in the West Division, operated the lines of their respective lessor companies until June 1, 1899, when all these lines were consolidated and thereafter operated by the Chicago Union Traction Company.

From his advent in traction matters Yerkes became a dominant figure. Always alert and bold, he made his opportunity and executed his designs with aggressive and unscrupulous hand. He knew no friend, no enemy; was callous to public opinion and went by straight or devious way to his object. In those operations by which general legislation was sought and from which other corporate interests, like the Chicago City Railway Company, would profit, he took upon himself the burden of obloquy, content to let others wear the mantle of respectability, share the expenses and reap some portion of the benefit.

Yerkes had an unlimited faith in his own power of achievement, in the credulity of the investing public, and in the dishonesty of public officials. It could almost be said that results justified his faith. His

executive force was great. The successive organizations of the lines of railway lying adjacent to the business district into the West Chicago Street Railroad Company and the North Chicago Street Railroad company and subsequently the Chicago Union Traction Company and the organization of the more remote lines into the Chicago Consolidated Traction Company, with the changes in physical construction incident thereto, were in their way distinct improvements in the transportation of the public and were in fact the first practical steps toward a possible greater unification embracing the service of the entire city. To Yerkes these improvements were only incidental to his larger purposes of promotion. They furnished mere devices for the imposition of double fares, the over-capitalization of his enterprises and the successful juggling of securities.

There was one phase of the situation which Yerkes failed to gauge correctly and in which he underestimated the forces against him. The Companies were not willing to rest on their claims under the ninety-nine year act, nor to leave the adjustment of their relations to the public to a fair and open consideration. They preferred a long term franchise which would quiet their title in the streets and to that end sought to gain by covert influences the control of the City Council, and failing in that, the State Legislature. In the struggle which ensued, Yerkes took the initiative and remained the central figure. He used the large and powerful resources of the companies without stint and without scruple and failed only because of the uncompromising opposition of resolute men, backed by a determined public sentiment. To him and his following is due the evolution of an

idea which in its inception was a deferential willingness to compromise with the companies on any just terms, but which under continuing provocation grew to a demand for the complete surrender of all privileges not based on strictest right.

Authorities: For copies of leases see Guaranty Trust Co. v. Railway Companies, U. S. Circuit Court, Vol. I, Doc. 9, pp. 45, 57, 83 and 87.

XII

THE GREAT STRUGGLE

The early nineties saw the beginning of a struggle between the Companies and the people for the possession and mastery of the streets—a struggle that began with small hope for the people and ended in their complete victory.

The Companies were grossly over-capitalized. Stocks and bonds had been issued far in excess of the money actually invested. The interest charges were large and the dividends paid, considering the safety of the investment, were enormous. The earnings of the railways which should have been used in keeping up repairs and in improving the service were diverted to the holders of these securities. The Companies wished to continue the payments of interest and dividends; they wished to secure new capital for the extension of their lines and for such improvements as they deemed necessary; they wished peaceful and undisturbed possession of the streets. They did not relinquish their claims under the ninety-nine year act, but wished to evade a contest concerning them. At the same time their physical properties had so deteriorated that radical changes became imperative and essential to any negotiations entered into with the City for an extension of their franchises.

The people were looking forward to the expiration of the franchise of July 30, 1883, as the time when

these changes would be made and when a more favorable arrangement would be entered into with the Companies than the one then existing. The issues were not closely thought out and there was no constituted channel through which they might be expressed and given force. A short term franchise not exceeding twenty years, added compensation to the City and a general improvement of the service fairly represent the extent of the claims made by the people. The demand for the waiver of all alleged rights under the ninety-nine year act came later. Notions of municipal ownership, unified service, through routes, universal transfers and provisions for future subways were doubtless in the minds of many and were recognized as having theoretical value, but do not seem to have entered sufficiently into the public consciousness to become clearly defined issues. They were at the best but vaguely conceived and would scarcely have been considered if a settlement had been made in the early days of the struggle. It required agitation and discussion to bring them forward.

As time passed and the policies and plans of the Companies became apparent, the opposition thereto became more marked and the demands of the people enlarged and more insistent. The Companies desired a long term franchise, longer indeed than the City had power to grant; the people would limit the franchise to a short period. As a last resort the Companies would insist upon their claims under the ninety-nine year act; the people as firmly denied them. The Companies were willing to make some concessions as to compensation and improvement of the service; the people demanded much greater ones. If the Companies at an early date had so willed, they could

doubtless have secured a twenty year franchise upon terms which later would have been considered "rich and juicy;" but so exorbitant were their desires and so great their confidence in their ability to get what they chose to go after, that compromise soon became impossible.

The Companies seemed to have every advantage. The City Council was flagrantly corrupt. The dominant element of the Republican party, then in power in the state, was favorable to the traction interests. The Companies had great wealth and power, which it was believed they would use without scruple. The forces of the people were unorganized. There was no directing hand; there were no tried leaders. The Council and the Legislature had to be won over to the performance of their proper functions as representatives of the people, and the people themselves needed a clearer knowledge of the manifold problems at issue and a truer appreciation of what they might demand. These things were accomplished in due season. As occasion arose, the Council, the Legislature and the people performed their proper service. Determination was strong. In some part the people acted on the defensive. They waited for the aggressive act and then arose with great heat and struck hard. Their work was also constructive. They conceived plans which they developed with great vigor. They won at every crucial point. The Companies were forced to yield one position after another. In the end they rested upon the sacred and inviolable ninety-nine year act. And this proved a frail support.

The educational value of the contest can hardly be appreciated. Every step in its progress was marked by a closer study of the situation, a more intelligent

conception of the questions involved, and a broader vision of the possibilities to be realized. Its moral value was equally great. It imposed upon city officials burdens of great responsibility and called forth the earnest activities of the entire citizenship. It solidified the various forces that were seeking a changed condition and directed them into a single channel. It exhibited the entire city working unitedly through its officials and its citizenship, with singleness of purpose and with steadfast resolve, for the acquisition of an end of supreme value and importance.

It was a contest without preëminent leaders. The energy and acumen of the best minds of the City were given in hearty coöperation and so many rendered effective service that it would be impossible to give to each his proper place. There are a few, however, whose position or opportunity, coupled with the peculiar service rendered by them, gave a certain preeminence. As such may be named: Carter H. Harrison, who withstood every effort of the Companies to obtain a settlement without full recognition of the demands of the people; John M. Harlan, whose fearless stand in the boodle council aroused the public to activity and whose aggressive leadership of the independent element of the Republican party in Chicago did much to compel favorable action in the Legislature; George E. Cole, who as first president of the Municipal Voters' League, organized the forces that gave the City an honest, efficient Council, and Bion J. Arnold, expert to the Committee on Local Transportation, who worked out the details of an adequate unified service for the entire city and furnished a practical solution of the vexing physical problems. The judgment, counsel and service of Edwin Burritt

Smith during his lifetime were of the highest order and of incalculable value to the people. Among these should also be counted Edward F. Dunne, who, elected Mayor on a municipal ownership platform, withstood the severest opposition and secured the passage of an ordinance for the issuance of the Mueller certificates necessary for the purchase of the railways, without which a satisfactory arrangement with the companies could scarcely have been made; and Walter L. Fisher, special traction counsel, who reduced to concrete form the suggestions of former years and in conjunction with Mayor Dunne and the Local Transportation Committee negotiated with the Companies a working agreement to be in force pending such purchase, probably the best in traction history anywhere. William E. Kent, Josiah Lombard, William Mavor, Frank I. Bennett, Ernest F. Hermann, Milton J. Foreman, Charles Werno, William C. Dever, George C. Sikes, George E. Hooker, Edgar B. Tolman, John C. Mathis, Clarence S. Darrow and many others contributed their aid in a less conspicuous but effective manner.

XIII

THE CRAWFORD BILL, 1895

The first move of the Companies was made in 1895. In that year Charles H. Crawford, Senator from the Third Senatorial District, Cook County, introduced in the Senate what was known as "Senate Bill No. 138." Lack of space prevents a detailed description of this bill, but, in brief, it was designed to give to City Councils the right to grant street railway franchises for the period of ninety-nine years instead of twenty years and to perpetuate the rights and privileges of companies then existing and in operation to the exclusion of new ones. The bill passed both the Senate and the House, but was vetoed by Governor Altgeld. In the Senate it was passed over the Governor's veto; in the House an attempt to pass it on the closing day of the session was abandoned when it became apparent that it could not get the necessary two-thirds majority. The words with which Governor Altgeld closed his veto message should become memorable:

"I love Chicago and am not willing to help forge a chain which would bind her people hand and foot for all time to the wheels of monopoly and leave them no chance to escape."

The City Council of 1895 was corrupt through and through, and there is little doubt but a ninety-nine year franchise as permitted by the proposed law

could have been secured by the Companies. The intervention of Governor Altgeld probably saved the City from a century's loss of the streets.

Authorities: House and Senate Journals, 1895, Senate Bill No. 138.

XIV

THE MUNICIPAL VOTERS' LEAGUE

The people did not trust the City Council. For years that body had made itself the clearing house for all sorts of schemes that would bring profit to its members. It dispensed favors with free hand wherever commensurate return favors were to be had. It organized dummy corporations, gave them valuable privileges and sold the privileges to the highest and best bidders. It voted franchises, for a consideration, of course, to financial adventurers and induced traffic in public utilities. It is doubtful if anything received its grace, from a permit to hang a sign to the most valuable thing within its gift, without a proper return. The giving and taking of bribes became regular and normal, exciting only casual or humorous comment.

Within the Council the few honest men were too nerveless and complacent to make much protest. But in 1895 William E. Kent was elected Alderman from the old 32nd ward, later the 6th ward, and in 1896 John M. Harlan was elected from the 22nd ward. These men were fearless. Their attack upon the prevailing corruption was strong and forceful. They brought the members face to face with their iniquities. They spoke in tones that were clear and certain. Their words met with quick response from the people and were, indeed, the tocsin sound that called to the battle. But upon their wicked associates

in the Council they had little effect. Under the leadership of the gang the course of corruption held its way.

The party organizations were controlled by the men who sat within the Council and by their fellows. Party devotion was strong and many good men voted regularly and without compunction the party ticket and for the known rascals who composed it. In reality there was little choice even for those who would do otherwise. It seemed impossible to bring opposition strong enough to win out against the compact organizations of the dominant parties. The few futile efforts that were made only tended to discourage those who attempted them. A large and growing number of voters longed for the City's regeneration, but lacked the way of bringing it about.

A few resolute men with clear heads and uncommon sense set themselves the task of showing the way. Their method was simple. They did not seek to form a new party or to force impossible candidates upon the people in opposition to the party nominees. They traveled the paths of least resistance and used the parties themselves as their instruments to blaze the trail. They assumed that the majority of the voters in the majority of the wards were honest men and wanted honest men in the Council; that such voters would discriminate between the party candidates and exercise their choice for the public good, if only the data were placed before them upon which to base a choice. The thing to do was to let the voters know the character and probable efficiency of the candidates, and the honest voters, being in the majority, would elect the better men and ultimately compel the parties to nominate the best men available.

The agency through which this was sought to be accomplished was the Municipal Voters' League. In January, 1896, about two hundred and fifty men from various clubs and organizations came together at the call of the Civic Federation for the purpose of devising means to retrieve the City from its condition of disgrace. A committee of fifteen was appointed by this conference to outline a plan of action. The sub-committee reported in favor of the organization of the Municipal Voters' League to be composed of one hundred representative men with power to act to secure the election of "aggressively honest men" to the Council. The one hundred men met but twice, once to elect a president to whom it gave the power to name an executive committee, and second, to hear the report of the executive committee after its first campaign. Thereafter the executive committee became self-perpetuating. It consisted of nine members elected for the term of three years, the office of one-third of the members expiring each year. The first president was George E. Cole and the first secretary was Hoyt King.

This committee applied to the selection of "aggressively honest men" for the Council what in learned institutions is termed the "laboratory method." They investigated the record of every alderman whose term of office was about to expire and made a preliminary report of the facts as found. After the nominations had been made and a few days before election it issued a similar report, setting forth in detail the facts concerning the life and fitness of every prominent candidate, adding thereto in few words the recommendation of the league. If none of the candidates were worthy of support, the league sought to induce inde-

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pendents to run and gave them its support. The investigations were made with great thoroughness and the facts carefully sifted. A scientific commission could not have been more thorough and careful. The league at once secured and has since retained the confidence of the people. Its honesty, sincerity and impartiality have never been questioned by any unprejudiced person and its reports are authoritative.

The activities of the league were chiefly in three directions, all of which had direct bearing on the traction question: First, the election of "aggressively honest men" to the Council; second, the non-partisan organization of the Council, and third, the securing of pledges from the candidates to support certain well defined policies promotive of the public good.

The results of these activities were soon apparent. The dormant spirit of independence was quickened; the public conscience was aroused. Honest men took heart and allied themselves with the new forces. Men of respectability refused to be associated with rogues whose rascality was thus brought to the light. The large corruption funds furnished to elect corrupt aldermen were no longer forthcoming when it became apparent that those aldermen would be shorn of their power. There was a gradual but sure disintegration of the forces that made for corruption and a corresponding upbuilding and cementing of the forces that made for better conditions.

It was necessary first of all to secure an excess of one-third of the aldermen, or enough to sustain the Mayor's veto; for there never was any doubt as to Mayor Harrison's attitude on traction. The people trusted him absolutely. In 1895 some fifty-eight of the sixty-eight aldermen were believed unworthy of

trust. In 1896, after the first campaign in which the league took part, there were twenty-two aldermen believed to be honest; in 1897 there were twenty-three, and in 1898 there were forty-two aldermen believed to be honest against twenty-eight believed to be dishonest. From that time the Council has always had a clear majority of honest, efficient men, and has been truly representative of the people.

It was desirable also that the Council should be so organized as to bring the honest, efficient men into leadership. This was accomplished in 1898. In 1899 the Republicans, being largely in the majority, returned to a partisan organization, taking care, however, to exclude from important positions those aldermen who had been declared unfit. The people were much dissatisfied with this action of the Republicans, and in 1900 the Council was again organized along lines of the greatest efficiency. The "aggressively honest men" were given the positions of greatest relative importance and the "gray wolves" were given those where their power to do harm was reduced to a minimum.

There was a great advantage derived from the policy of the league asking candidates to sign a statement of principles. On the traction question this statement contained the points insisted on by those who had given the subject the most earnest attention and which were considered vital to its proper settlement. The people were thus informed by the signing or refusal to sign such statement of the attitude of each alderman.

Thus it came about that when the Companies, after exhausting all other means, were forced to open negotiations with the Council, that body was composed of

men of exceptional character and ability, organized with a view to their highest efficiency, equipped by careful study and disposed by conscientious regard for duty to give the City their best and truest effort.

XV

THE HUMPHREY BILLS

With a corrupt Council, such as existed in 1895, possessing the right to grant franchises for ninety-nine years, the Companies presumably would have been willing to take their chances. But after the failure of the Crawford bill they began to develop other plans. The twenty years for which the Council could grant a franchise was too short a period. Twice that and a half more was little enough. Besides, with the awakened interest among the people and the changing personnel of the Council a lot of ugly questions were likely to arise in process of negotiations that could be best evaded by a minimum of discussion. Why raise these questions? Why treat with the City at all? Why not use the tactics that won in the enactment of the ninety-nine year act? With extreme audacity the Companies sought to ignore the people and to dispose of the entire problem in a manner satisfactory to themselves by an act of the Legislature.

So while the people were seeking to cleanse the City Council, the Companies were as busily making themselves right with the political managers and electing the right men to the Legislature. In 1897 the time for good things seemed ripe. The Legislature of that year was ideal. A majority of the members were of the sort to know the taste of butter on bread. They liked jam, too. And the Companies had storehouses of bread, butter and jam. Once for all

it may be recorded that, according to the settled belief of that time and since, the Companies used venal and corrupt methods to accomplish their ends. This belief was not of the sort that begins in mere suspicion and passes with the fancy of the moment, but amounted to a deep-seated conviction; and although possibly not founded on occular proof, had for its basis circumstantial evidence of convincing potency. Indeed, one cannot contemplate those days without deep humiliation. The Republicans were in power. John R. Tanner was the acknowledged leader of the party in the state, and William Lorimer in Chicago and Cook County. These men and their immediate associates named the candidates for office, managed the campaigns and controlled the policies of the party. Their ideals of public service—if the term can be so degraded—were of the lowest order. To perpetuate themselves in office and to make the offices the means of their own advancement and enrichment seemed to be their highest conception of public duty. They filled the offices, both appointive and elective, with a horde of their followers, eager to feed and willing to wallow at the trough. In view of what followed, the subterranean connection between these men and the Companies is easily discerned.

The Fortieth Session of the General Assembly convened January 6, 1897. On the 17th of February, John Humphrey, Senator from the Seventh Senatorial District, comprising the country towns of Cook County, introduced in the Senate three bills, Nos. 148, 149 and 150, and on his own motion had them referred to the Committee on Railroads.

Bill No. 148 provided for the establishment of a State Commission, appointed by the Governor, which

should have practically exclusive oversight and control of all street and elevated railways in the state.

Bill No. 149 provided that the ordinances of all street railways in actual operation on the first Tuesday of September, 1897, should be extended forty years upon payment by the companies of $2,000 per mile in counties whose population exceeded 100,000 inhabitants and $500 per mile in counties whose population was less than 100,000 inhabitants. This payment was not to be made annually, but once made was for the entire forty years.

Bill No. 150 provided for the annual payment by the Companies to the State Treasurer of three per cent of the gross earnings of the railroad for the year last preceding, two-thirds of which might be paid by the State Treasurer to the city, town or village in which the lines of the corporation were located.

The bills were understood to be mere stalking horses. It was not expected they would pass in their then form. They simply foreshadowed that something was to follow, either better or worse. Among the Legislators they were expected to stimulate faith, to excite visions of "the substance of things hoped for." No one claimed to know their origin or who inspired them. Even the railway officials raised the cry of "Stop thief" and said the Companies were about to be sandbagged.

On the 9th of March, while the bills were still in committee, an invitation was extended to all members of the General Assembly to meet the committee on railroads of both the Senate and the House the following afternoon, on which occasion, it was announced, a number of prominent men would be present. The prominent men were Charles T. Yerkes, C. L.

Bonney, Larry McGann, Julius Grinnell and S. P. McConnell, representing various street railway interests of Chicago. These accommodating gentlemen had graciously responded to an invitation and had come all the way from Chicago to enlighten the Legislature. As no expense bills were ever presented to the state, it is supposed they paid their own car fare and lost their time. So eager, indeed, was Mr. Yerkes in the cause of enlightenment that he even opened rooms at the hotel and any Legislator, seeking information or *otherwise,* was welcomed to come at any time and get all there was, and many, it is said, went in thereat and got information, or *otherwise.* A powerful lobby in the interest of the street railways of the state was maintained throughout the session.

On the 16th of March John J. Morrison, Chairman of the Committee on Railroads, reported back all three bills with the recommendation that Bill 148, to establish a State Commission for street and elevated railroads, pass, and that the other two be laid upon the table. For these latter he recommended a substitute thereafter known as "Senate Bill No. 258." The two bills, Nos. 148 and 258, went the usual course through the Senate, were amended on second reading, and passed on the 16th of April, 1897, the vote on each standing twenty-nine to sixteen.

Bill No. 148, to establish a street and elevated railway commission, as amended and passed by the Senate, gave to the State Commission power to regulate the running, speed, headway and heating of cars, to determine the kind of parcels and packages the roads might carry and the charges to be paid therefor; to authorize a change of motive power or the use of a particular power; to decide whether a new or pro-

posed line or the extension of an old one was necessary to the public convenience, which decision must first be secured before the local authorities could grant a franchise; to sell at public auction every franchise so granted and to fix the amount of fares to be paid, except that it could not reduce the maximum rate fixed by any ordinance then in force during the life of the ordinance, and when a rate was once fixed it could not be reduced for twenty years. The Commission was to consist of a board of three Commissioners appointed by the Governor, for a period of fifteen years, and was to be located at Springfield. By this bill the practical control of the street railways of any community would have been taken from the local authorities.

The features of Bill No. 258, most vital to the situation in Chicago, were contained in Sections six and seven. Theretofore the cities, towns and villages incorporated under the city and village act had enjoyed a large measure of home rule in the matter of street railway franchises. As before noted, the corporate authorities of such municipalities had original power, independent of the State Legislature, to make grants. The limitation of such grants to twenty years acted as a protection to the people against the improvident giving of franchises. Section six of this bill extended this power to grant franchises from twenty to fifty years, thus making it possible for weak or corrupt authorities to do infinite harm in their respective communities.

But Section seven went still farther. Previous to the adoption of the Constitution of 1870 a large number of grants had been made from time to time to street railway corporations throughout the state by the Leg-

islature itself and subsequent thereto, the corporate authorities of cities, towns and villages had exercised freely the powers given them under the city and village act. As a result there were numberless franchises in force in every part of the state, expiring at different times, acording to the dates, respectively, of the grants. For the most part these franchises had been made for twenty years upon terms and conditions adapted to that period. It was directly essential to the interest and welfare of the people in the respective communities that each franchise should stand by itself, subject to such changes in terms and conditions at its termination as the peculiar locality and situation rendered desirable. And the local authorities were the best judges of what the terms of renewal should be.

Section seven proposed to deprive the municipalities and the people from having any voice whatever in the renewal or extension of the franchises. It provided that every street railway ordinance then in force should be extended for the period of fifty years from and after the first Tuesday in September, A. D. 1897. It provided further that the street railway corporations in whose favor such ordinances had been passed should have the right to charge during the life of the extended ordinances five cents for each passenger for a continuous ride for the distance or distances specified in the ordinances so extended. The only condition imposed upon the corporations was that each corporation should pay as follows: In counties not exceeding 100,000 inhabitants one per cent per annum of its gross railway earnings, and in counties having a population exceeding 100,000 inhabitants and not exceeding 200,000, two per cent per annum of the gross earnings,

and in counties having a population exceeding 200,000 inhabitants, three per cent per annum of its gross earnings for the first fifteen years, five per cent per annum of its gross earnings for the next succeeding twenty years, and seven per cent for the remaining fifteen years.

The effect of this proposed legislation in Chicago would have been to continue for the period of fifty years conditions which had already become intolerable. The inconvenient, confused muddle of down town loops and terminals; the cumbersome, oppressive divisional system with its double and sometimes triple fares; the old, dirty, cold and illy ventilated cars and all the inadequacies of the service so well known to Chicagoans would have been fastened upon the City for that period of time, subject only to such modifications or improvements as the people's servants, the Companies, acting in their sovereign capacity, might be gracious enough to make. Since the rates of fare and compensation to the City were fixed for the period, all the benefits to be derived from new inventions and the decreased cost of transportation would have been the Companies' own; while the vexations of the people would have been multiplied with the increasing population. The only remedies left the City would have been the weak, inefficient ones afforded by the common law and the exercise of the police power, the attempted enforcement of which would have resulted in constant litigation, with comparatively insignificant results. Even these would have been interfered with, if not annulled, by the law creating a State Commission.

Authorities: Senate and House Journals, 1897, Senate Bills Nos. 148, 149, 150 and 258.

XVI

OPPOSITION TO THE HUMPHREY BILLS

These vicious measures would have become law except for the vigorous, even violent, protest of the people. The dissent was first expressed through the press. Upon the introduction of the bills the Chicago newspapers and throughout the state many of the leading journals reported the bills, analyzed them and pointed out their evil effect. Individuals expressed themselves through printed interviews. Concerted action was undertaken by the Civic Federation in a call issued on March 13 for a mass meeting to which were invited "all clubs, societies and organizations of Chicago favorable to good government and fair compensation for public franchises." The meeting was held at Battery D, March 20, was presided over by W. T. Baker, President of the Civic Federation, and was addressed by Edwin Burritt Smith, John M. Harlan, N. A. Partridge, Judge Kohlsaat, Rev. P. S. Henson, Franklin H. Head, F. J. Loesch and J. J. McGrath. It was participated in by all the leading clubs and societies of the city, was largely attended and expressed in a series of strong resolutions the universal condemnation of the bills and the methods used to advance them.

This meeting and the discussions in the press gave strong impetus to the rapidly forming public sentiment. The opposition to the bills gained in volume each day.

It began to crystallize along definite lines and to be developed through effective channels. A Committee of One Hundred, representing the Civic Federation and its allied organizations, gave the movement general direction. A subcommittee of the one hundred, acting as an executive committee, formed a nucleus around which the forces in opposition to the bills gathered. Of this subcommittee Josiah L. Lombard was chairman, and to his untiring efforts and wise direction the greatest credit must be given. His associates on the committee were John H. Hamline, Simeon P. Shope, William A. Giles, John W. Ela, John Mayo Palmer, Edwin Burritt Smith, Francis B. Peabody, Franklin H. Head, Sigmund Zeisler, Adolph Kraus, Adolph Nathan and Newton A. Partridge. This committee issued a pamphlet giving detailed information of the character and scope of the bills; the Building Trades Council passed condemnatory resolutions and the Chicago Federation of Labor, having a membership of more than 100,000, published and circulated an address of exceptional clearness and vigor. The address was signed by P. F. Doyle, President; C. G. Stivers, Secretary, and C. M. Holmes, L. Diekart, James H. Payne, V. B. Williams and James O'Connor, members of the Executive and Legislative Committees, and ended in an appeal to the Legislature "not to lay upon the living and unborn these two 'dead hands' of government by syndicate and monopoly in perpetuity."

The companies sought in various ways to neutralize the effect of the agitation. Petitions in favor of the bills were circulated by men hired at the rate of one dollar for each one hundred names, were signed by transients, tramps, children and saloon bums, and exhibited before the Legislature as the genuine index

of public sentiment. The Chicago City Railway Company published a full page advertisement in the papers with maps designed to show how much greater distance one could ride for five cents than in the early history of the company; Yerkes issued a pamphlet and gave it wide distribution, and space was bought in the columns of country newspapers for the insertion of matter favorable to the Companies.

On Wednesday, April 14, the Senate met as a Committee of the Whole to consider the bills and gave opportunity to outsiders to appear for or against them. Newton A. Partridge, Leroy D. Thoman, F. P. Doyle and John H. Hamline addressed the committee on behalf of the people, and Charles L. Bonney, Charles T. Yerkes and Joseph Mann for the companies. Prof. Edward W. Bemis, who had made a study of street car statistics, was present and was expected to analyze those given out by Yerkes, but was not allowed to speak. Otherwise the discussion was thorough and complete. A large delegation of citizens from Chicago was present. On that day it was believed the bills could not pass, but on the following day it was found that something had happened over night that made it possible to add such amendments as the Companies desired, vote down the undesirable ones and pass the bills to the third reading.

Hitherto the opposition had been determined and persistent, but when, on the 16th of April, the Senate passed the bills, the indignation of the people flashed forth like lightning from an angry sky. Or, it was a flame of fire that burned fiercely, but with increasing force. Every avenue through which public opinion is wont to express itself gave vent to the people's wrath. The press, the pulpit, the social, commercial

and civic clubs of the city, the labor organizations, united as against a common enemy. Nor was the protest confined to Chicago. Throughout the state the bills were denounced as an attempt to inaugurate an era of street railway domination.

Two monster mass meetings were held, one at the call of the Committee of One Hundred, at Central Music Hall, Sunday afternoon, April 18, and the other at the call of the Citizens' Association, at Battery D, Tuesday evening, April 20. The Central Music Hall meeting called forth the statement from Carter Harrison, newly elected Mayor: "Whenever the right is with the City, the administration at the City Hall will be on its side, against any and all corporate interests." John H. Hamline said: "Is not that man a boodler who will year after year sit at a director's table and vote money for boodle? When you stamp the scarlet letter on their backs, a man like Yerkes cannot exist in this community." Franklin H. Head said: "The passage of these bills would be a long step backwards in the theory and practice of Municipal government." John W. Ela said: "No such blow has ever been dealt the cause of self-government in this country as was inflicted in the Senate of Illinois on Friday." John M. Harlan called the roster of leading stockholders and directors of the Companies and demanded they put a stop at once to the work being done by their agents and attorneys.

At the Battery D meeting the names of the twelve Cook County Senators who voted for the bills were framed in the dollar mark, in huge black type, and hung about the room with placards that stigmatized them as public enemies. William E. Kent offered these resolutions:

"BE IT RESOLVED, by the Citizens of Chicago, in Mass Meeting assembled, that every representative and senator from Cook County who votes for the Humphrey bills is a public enemy, and that he be treated as a traitor to his constituents in his public and private life; and that his name be Judas, for that he has sold his master, the people, for a few pieces of money; and that the price of his treason be spent, together with the remainder of his blasted life, apart from the constituency that he has betrayed; and that, although respect for law may prevent the personal violence due a burglar,

"BE IT RESOLVED, that we, citizens here assembled, solemnly, steadfastly and unforgetting set about to teach the people the wrong done them to the end that deserved infamy and ultimate ruin may mercilessly dog the steps of public thieves.

"AND BE IT RESOLVED, that as an initiative the name of every legislative scoundrel be posted on the public billboards of his district, and that this meeting here and now authorize the branding of Senators Anthony, Case, Crawford, Gurley, Dwyer, Fitzpatrick, Humphrey, Landiss, Morrison, Netterstrom, O'Brien and Sullivan as men to be followed by contumely, contempt and insult to their graves. Let the curse of an outraged people be upon them forever."

A few days later there appeared upon the billboards in their respective districts, framed in dollar marks, placards bearing the names of the discredited senators like the following:

CHARLES H. CRAWFORD.

This man voted for the Humphrey Bills!
He betrayed his constituents!
Remember Him!

Violent as these manifestations seem to be, they indicate but feebly the disturbed condition of the public mind. Equally they were the surface indications of a deep, strong, irresistible purpose to defeat the bills. The companies sought to delay action in the House, hoping the opposition might lag and the people be caught unawares. The Committee of One Hundred opened headquarters and appointed a subcommittee on local action, consisting of Josiah L. Lombard, G. P. Engelhardt, Edgar B. Tolman, N. C. Sears, Lawrence P. Boyle and Charles Shackelford to keep alive the agitation. The City Council joined forces with the foes of the bills by the appointment of a committee of seven of its members who were authorized to endeavor in every proper way to cause their defeat. Carefully prepared arguments were disseminated by means of pamphlets, in speeches and through the press. Within the House a committee, consisting of six Republicans and six Democrats, was formed to work with the opposition. The committee consisted of Tisdel, Shanahan, Miller, Needles, Bailey and Rowe, Republicans, and McGoorty, Stoskopf, Perry, Staudacker, McLaughlin and Alschuler, Democrats. An Anti-Humphrey bills caucus, held April 29, enrolled ninety members. It was impossible for the Representatives to withstand the pressure brought to bear, and on the 12th of May, upon the second reading, the enacting clause of each bill was stricken out by a vote of 121 to 29. The Humphrey bills were dead. The people had won their first victory.

XVII

THE ALLEN LAW

Yerkes was wroth. He denounced Chicago as "anarchistic" from the top down and declared capital would fly the City. The legislators were sad, the people rejoiced. But not for long. Yerkes returned to his labors, the legislators were repentant, the people renewed the struggle.

The history of the closing days of the session is a curious and interesting story. It is the record of how three bills of varying degrees of badness were played as the shells in a diverting game to hide from the public the real intent of their authors; of how one Allen, an average legislator with small knowledge or experience in railway matters, became the reputed author of an accepted bill; of how an opportune sore tooth in the mouth of Speaker Curtis, for which no balm could be had except at the Mammoth Cave of Kentucky, became the means of placing the Speaker's gavel into the hands of an adroit friend of the Companies; of how rules of order were juggled to give the proposed Allen bill the precedence over all other pending measures; of how the supposedly compact majority of 121 to 29 in the House against the Humphrey bills melted away under the golden sunshine of Yerkes' smile to a majority of 85 to 60 in favor of the Allen bill; of how the Senate transformed the bill as it came from the House into a thing of such beauty that the

House in the closing moments of the session recognized at sight its perfection and adopted the new creation as its very own; of how all these things were done in the minimum of time permitted by the constitution and against the persistent and vigorous protest of the people most interested.

The Allen bill was introduced in the House from the Judiciary Committee on May 26, 1897, and passed that body May 28 by a vote of 85 to 60; it was reported to the Senate June 1, amended and passed June 4 by a vote of 31 to 18; on the same day the Senate amendments were concurred in by the House by a vote of 83 to 70. It was approved by Governor Tanner June 9, 1897.

As compared with the law previously in force, the Allen law was presumed to give the Companies distinct advantages. It permitted non-competing companies to consolidate. It prohibited the use of the tracks of any company by any other company without the former's consent, and since it was impracticable to construct new lines in the business district of the City, this prohibition amounted to the exclusion of all competition. Of still greater advantage to the Companies, in case a franchise could be secured to their liking, it permitted city authorities to grant franchises for the period of fifty years instead of twenty years, as under the old law, and fixed the fare for the first twenty years thereof at five cents. The real advantage, however, remained with the City. The Allen law contained no provision for a State Commission and did not seek to extend the ordinances then in force. The most flagrantly objectionable features of the Humphrey bills were thus omitted. The Companies were still

under local control and must apply to the local authorities for any extensions they might desire.

In reality the victory gained by the Companies was without substance. The agitation and discussion of the preceding months had left its permanent effect. The demands for a short term franchise, ample compensation to the City and a reasonable improvement in the service had been thoroughly impressed upon the public mind, and to these essential conditions of a franchise the Mayor and many leading members of the Council stood committed. Thereafter the people were alert and watchful. Concessions which the Companies might formerly have secured were no longer possible. The fifty year franchise with its fixed rate of fare of five cents a ride for twenty years could never be more than a vain hope; it could not become a reality.

XVIII

THE HARLAN REPORT

From this time on the lines between the City and the Companies were more closely drawn. An ordinance drafted to suit the Companies, passed by a corrupt Council, signed by a complaisant Mayor, and having the seeming assent of an apathetic public, was no longer to be had. The Mayor had said he would be with the people as against any corporate interest; the Council had its quota of honest men and was being closely watched; the people were organized along lines to make public opinion effective.

It was expected the Companies would apply at once to the Council for ordinances along the lines indicated in the Allen law. As the Council was then organized such ordinances in their natural course would come before the following committees: Finance, Railroads, Streets and Alleys South, Streets and Alleys North, and Streets and Alleys West, of which John Powers, Charles Martin, the brother-in-law of O'Brien, Powers' partner, John J. Coughlin, Thomas J. O'Malley and John J. Brennan, respectively, were the chairmen. These were leaders of the worst element of the Council and their power for evil was believed to be very great. However, Mayor Harrison had the full confidence of the people and was trusted to veto any objectionable ordinance; twenty-three out of the sixty-eight aldermen had received the approval of the

JOHN M. HARLAN

Municipal Voters' League and were expected to uphold the Mayor. So while such an ordinance might secure a majority vote in the Council, it was believed enough votes could be had to sustain the Mayor's veto and prevent its final adoption. Still the people were apprehensive.

A program of education was entered upon both within the Council and among the people. On June 21, 1897, twelve days after the approval of the Allen law by Governor Tanner, John M. Harlan offered a resolution in the Council providing for the appointment of a special committee consisting of four members of the Council and the Mayor to investigate fully the traction situation and to report conditions. The resolution was passed October 13, 1897, and John M. Harlan, William Jackson, Adolphus T. Maltby and William T. Maypole, with Mayor Harrison as Chairman ex-officio, constituted the committee. George E. Hooker was appointed Secretary.

In its preamble the resolution recited that the Companies had recently secured the enactment of the Allen law and were likely to apply to the Council for the renewal of their franchises, and that it was essential to the interests of the people of Chicago that the Mayor and Council should be fully informed as to all the facts bearing upon the mutual relations of the City and the Companies in order that they, the Mayor and Council, might determine, when called upon, with justice to the people of Chicago and to the Companies, upon what terms and by what persons public streets should continue to be used for street railway purposes. The preamble further declared that the people and corporate authorities of Chicago, while desiring and intending to do full justice to the Companies, were resolved that

any grant for the further use of the public streets should be made only upon terms that should fully protect the interests of the people as well as of the Companies.

By the terms of the resolution the Committee was directed "to investigate and obtain as full and accurate information as possible and report to the Council all the material facts": As to what lines of railway were then operated by the then Companies and under what franchises, specifying the dates, respectively, when the franchises expired; as to the original cost and then value of all of the tangible property of the Companies with an inventory thereof; the gross receipts, operating expenses, fixed charges and amount and rate of dividends paid by each of the Companies during each year of its existence; the amount of capital stock and average market value thereof during the year 1896 and prior years, so far as material, together with the date, amount and purpose of each issue thereof; the amount of bonded indebtedness of each Company, the annual interest thereon and the purpose for which it was created; the amounts paid into the public treasury by each Company for taxes, licenses or other purposes during each year of its existence; the number of passengers carried and the number of transfers issued during the year 1896 and prior years, so far as material; the amount and value of donations, bonuses or other payments received by each Company at any time for the extension or building of their lines in new territories; the amount of capital lost by reason of a change of motive power, and the scale of wages paid employes by each of the Companies and the conditions of employment.

The information desired was necessary to any fair

consideration of the qeustions involved, and without which the City Council could not act intelligently. It consisted in large measure of the facts relating to the operation of railway lines within the city which had been demonstrated by actual experience, and which in justice must be the basis for future negotiations. As the Companies had never been obliged to file reports, much of the information was locked up in their vaults and could not be secured without access to their books. If the Companies had dealt honestly with the public in the past and desired to be fair in the future, they would have welcomed the investigation and assisted the Committee in every way possible. On the contrary, they refused or failed to give any information whatever, and their attitude toward the Committee was hostile throughout. "That attitude," says the report, "on the part of the North and West Side Companies has been one of confident indifference and pronounced defiance, and on the part of the South Side Company one of plausible but wholly unfulfilled assurances."[1]

However, the Committee made a thorough investigation and filed its report March 28, 1898. The report, known as "The Harlan Report," was exhaustive as to most of the points covered by the resolution and has become one of the authoritative documents in the history of Chicago Traction.

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[1]Harlan's Report, p. 18.

XIX

THE ALDERMANIC AND LEGISLATIVE ELECTIONS OF 1898

The Companies did not apply at once to the City Council for an ordinance under the Allen law. They doubtless waited in the hope that the agitation over the attempted passage of the Humphrey bills would subside, or that another Aldermanic election would give them a sure majority in the Council.

In this they were disappointed. The people did not forget nor cease their efforts. They began a systematic campaign to increase their strength in the Council and to secure the repeal of the Allen law. These two objects went hand in hand and were of primary importance for the succeeding two years.

In the Aldermanic election of 1898 the paramount issue was Yerkes and the Allen law. Unless enough aldermen could be elected to defeat a fifty year franchise, as provided in that law, the inference would be clear that the people endorsed the law and wished it to stand. The contest was carried into each ward. There were thirty-four aldermen to be elected, and the greatest effort was made to secure the nomination in each party of honest, efficient men pledged to the cause of the people.

After the nominating convention every candidate was requested to sign the platform of the Municipal Voters' League, which contained a pledge not to vote

for any franchise exceeding twenty years, or which did not provide for ample compensation to the City.

The result of the election was decisive for the people. Out of twenty-nine candidates endorsed by the League nineteen were elected. Of the remaining newly elected aldermen six had signed the platform of the league and were counted on as safe and reliable. The election of Fred W. Upham in the 22nd ward over John H. Colvin, a notorious gangster; of Ernst F. Hermann, Independent, in the 21st ward, and of Hugh Darcy in the 33rd ward, was especially significant of the trend of public sentiment. Of the aldermen whose terms were unexpired thirteen were safe and three or four more were on the dividing line and considered so if emergency arose. In all, it was believed that forty-two out of the sixty-eight aldermen would stand together against an Allen law franchise; but even if this majority should shrink to twenty-three, there would still be enough votes to sustain the Mayor's veto.

Concerning the result of the election, George E. Cole, President of the Municipal Voters' League, said:

"This election marks the downfall of Charles T. Yerkes as the dominant force in the City Council. Its results mean his elimination as a factor in our municipal affairs. They mean he never will be the factor he has been in Chicago life. * * * The people have won the first fight on the Allen law. * * * The fight can now be carried into the Legislature, and the election of legislators pledged to repeal the Allen law will be of some value to the people of Chicago." (*Chicago Tribune*, April 6, 1898, p. 6.)

The effort to procure the repeal of the Allen law was prosecuted with equal vigor. The next General

Assembly would convene in January, 1899, and the Legislative elections would be held in November, 1898. The pressure of public opinion was so strong that the County Conventions of all parties in Cook County and many other conventions throughout the state declared for the repeal of the law. The State Conventions also passed resolutions to the same effect. At the same time a contest was made in the various Legislative districts of the state against the re-nomination and election of those candidates who in the preceding General Assembly had voted for the Humphrey bills or the Allen law. The result was that of the 114 members of the House and Senate who voted for the Allen law only 22 were returned.

XX

THE LYMAN, KIMBELL AND HERMANN ORDINANCES—REPEAL OF THE ALLEN LAW

There was no longer any doubt as to the determination of the people to have part in the settlement of the traction question. Both the railway officials and the politicians had come to realize this condition of the public mind. It was equally well settled that a fifty year franchise could not be passed. Nevertheless, on the 5th of December, 1898, about a month after the Legislative elections which brought slaughter to the Allen law candidates, the Companies made application to the Council for such an ordinance. It was introduced by William H. Lyman, of the 23rd ward, and was accompanied by a letter signed by the presidents of the roads urging its adoption. By what means the Companies expected to secure its passage cannot be mathematically known, but it is reported and generally believed, that "extraordinary influence" was brought to bear upon individual members of the Council to pass the ordinance and upon Mayor Harrison not to veto it. However that may be, such attempts, if made, were unavailing.

The Lyman ordinance was referred to a Joint Committee of Streets and Alleys South, Streets and Alleys North, and Streets and Alleys West. It remained with the Joint Committee until December 19, 1898, when it

was withdrawn and referred to the Committee on City Hall. It was held by the latter Committee until February 14, 1899, when in accordance with an adverse opinion by Corporation Counsel Granville W. Browning a majority report was made, recommending that no legislation at all be enacted at that time. A minority report, signed by William C. L. Zieler and William Mangler, recommended the passage of the Kimbell ordinance.

The proposed Lyman ordinance provided that every ordinance passed prior to July 1, 1897, and in force on that date, granting to either the Chicago City Railway Company, the West Chicago Street Railroad Company, the North Chicago Street Railroad Company, the North Chicago City Railway Company, the Chicago West Division Railway Company, the Chicago Passenger Railway Company, the Cicero & Proviso Railway Company, the Ogden Street Railway Company, the Chicago & Jefferson Urban Transit Company, the Chicago North Shore Street Railway Company, the North Chicago Electric Railway Company, the North Side Electric Street Railway Company, the Chicago Electric Transit Company, the General Electric Railway Company, the Chicago General Railway Company, the West & South Towns Street Railway Company, or to any two or more of them, the right to construct a street railway in the City of Chicago be extended for the period of fifty years. It further provided that the rate of fare should be five cents for the first twenty years and as compensation to the City the Companies should pay on gross receipts per mile of single track the following rates: On gross earnings between $7,500 and $10,000, one-half of one per cent; between $10,000 and $12,500, one per cent; between

$12,500 and $15,000, one and one-half per cent; between $15,000 and $20,000, two per cent; on $20,000 or more, three per cent; on $7,500 or less, no compensation. There was no provision for publicity except the requirement that each Company should file annually a statement showing its mileage and gross earnings.

The inadequacies of the ordinance are apparent. It was all for the Companies and nothing except the trifling compensation for the City. As to the things most needed it was eloquently silent. In effect it perpetuated the original divisional system and also the sub-divisional system of the North and West sides devised by Yerkes. It contained no promise of improvements. Through routes, universal transfers, unified service, were not to be thought of. Clean cars, warm cars, ventilated cars, more cars, improved service, might be had if the Companies so willed, or if forced by the City through its exercise of the police power.

The proposed Kimbell ordinance recommended by the minority report provided that the street railway ordinances then in force should be extended to December 31, 1946; that the Companies should pave the entire roadway of the streets occupied by them; that the rate of fare for the first twenty years should be five cents, which should entitle the passengers to one free transfer on all North and West side intersecting lines; that the Companies should sell tickets at the rate of six rides for twenty-five cents, which should be good between the hours of 6:30 a. m. and 8 a. m. and 4:30 p. m. and 6 p. m.; that the Companies should pay to the City for the period between ten and twenty years of the duration of the franchise three per cent of its gross earnings; between twenty and thirty years, four

per cent, and for the remiander of the period five per cent of its gross earnings. At the end of the period the City should have the right to purchase the entire equipment at an appraised value.

The proposed Hermann ordinance provided among other things that all franchises then in force be extended for twenty years, provided in case the City should thereafter acquire the right to own and operate the lines it might purchase the same by paying the value thereof and that the Companies should pay the City ten per cent of their gross earnings.

The Allen law was repealed March 7, 1899, and on March 13 the proposed ordinances and all matters relating thereto were by resolution of the Council placed on file. By the repeal of the Allen law the power of the Council to grant franchises was again limited to the period of twenty years. The City had won against bribery and corruption. The Companies had no further chance to secure franchises by covert means. They must either enter into fair and open negotiations with an honest, efficient Council, or place their sole reliance upon the ninety-nine year act.

XXI

THE STREET RAILWAY COMMISSION

Hitherto the energies of the people and of such aldermen as favored a rational settlement of the traction question had been chiefly directed in repelling the covert attempts of the Companies to secure ill-considered and wholly partial privileges. Henceforth the Council carried on a line of investigation and effort designed to furnish the basis for constructive work in the development of a system of railways best adapted to the needs of the City.

The first step in this direction was the work done by the Harlan Committee, embodied in the Harlan Report already alluded to. That report, however, dealt only with detailed information; it did not formulate or suggest plans for future action. Its publication and distribution stimulated a demand for a concrete policy in the readjustment of street railway conditions to which the Companies, if they continued to occupy the streets, must adapt themselves.

To this end the City Council on December 18, 1899, provided by resolution for the appointment of a special committee of seven, subsequently known as the Street Railway Commission. In the preamble the resolution recited that it was almost the unanimous opinion of the people of Chicago that the then existing laws and ordinances relating to street railway franchises and the municipal regulations of the operation of street

railway systems were antiquated and wholly inadequate to meet the needs of the City of Chicago, both as to the accommodations for passengers and the compensation for the use of the public streets; that constructive legislation was necessary to correct the evils and defects of the past and to assure to the people good and efficient service, as well as just and adequate remuneration for the privileges enjoyed by the Companies; that the question of municipal ownership of street railways was engrossing public attention and its expediency and desirability must be taken into serious consideration before any final steps were taken toward removing existing or granting new franchises, and that a submission of any final plans of settlement to the people by means of the referendum might be advisable.

The resolution directed the committee to examine into the feasibility and practicability of the municipal ownership of street railways in the City and the terms and conditions under which such ownership might be had. It further directed the committee to examine into the questions of kind and amount of compensation and the conditions for the renewal of existing or the granting of new franchises; the kind of motive power best adapted to various sections of the City; the condition in which the streets, highways and tunnels are to be placed and maintained by the Companies using them; accommodations to be furnished passengers; amount of fares, commutation tickets and transfers; terminal facilities and switches; extension of lines; the hours of employment and compensation to the employes; the protection of the citizens against accident, and the penalties for non-compliance with the laws, ordinances, rules and regulations.

The committee were further to report to the Coun-

cil such measures, modes of procedure and ordinances as should be requisite and necessary to carry into effect the recommendations of the commission.

On January 15, 1900, the Council adopted a further resolution directing the commission to examine and report as to what companies, if any, were authorized by their charter to operate street cars by other than animal power; the validity of ordinances granting such right in opposition to the Companies' charters; the provisions of the ninety-nine year act with reference thereto; and what street car lines, if any, might be acquired by the City by virtue of the ordinances under which the various street railways were existing.

The committee consisted of Milton J. Foreman, Ernst F. Hermann, William S. Jackson, William F. Brennan, Walter J. Raymer, William Mavor and William E. Schlake. It made its report December 17, 1900. It recommended that the street railway business be recognized and treated as a monopoly; the reservation to the Council of broad powers of control over the business, and to that end the creation of a new standing committee on local transportation; that although not necessarily desiring to exercise it, the City should have the power to own and operate street railways, leaving to future generations the right to decide for themselves; a referendum to the people on all important questions of street railway policy; full publicity of the affairs of the Companies; a law against overcapitalization; a qualified frontage law; compulsory arbitration of all labor troubles; the best and most desirable form of motive power shown by experience to be practicable; provisions for future subways; compensation to the City; the co-ordination of surface lines and steam and elevated roads and an absolute surrender by the Com-

panies of any claims of rights under the ninety-nine year act as a condition precedent to any further grant of privileges.

Such of the above recommendations as were deemed necessary were incorporated into the draft of a bill which the committee recommended should be presented to the State Legislature, with the request that it be enacted into law. On January 14, 1901, the City Council approved the draft of the bill and directed the committee to press it before the Legislature. It was accordingly introduced but failed of enactment.

It will be noted that the recommendation of the Street Railway Commission had reference to the future conduct of the City in the management of its street railways. It suggested private ownership and operation as probably desirable for the immediate future, but urged the acquisition of the right of municipal ownership and operation as a possible alternative. It presented definite suggestions as to nearly every phase of the street car situation and embodied these into practical shape in the form of a bill which it pressed before the Legislature for passage. For the first time in the history of City traction, the Council pursued aggressively a line of affirmative action and thus inaugurated a policy which has since been followed consistently and has become a vital one to the public.

XXII

THE COMMITTEE ON LOCAL TRANSPORTATION

The Harlan committee and the Street Railway Commission had performed valuable service. The former had collected and arranged in convenient form a large mass of information essential to any proper consideration of the traction problem and the latter had made definite suggestions as to a policy thereafter to be pursued. The work of both, however, was tentative and in large measure preparatory. Neither body had a permanent existence and there was no provision made for the continuation of the work they had begun.

The need of a permanent body to continue the investigation, to consider new questions as they arose and to recommend lines of action were soon realized, and to meet this need the Council on May 20, 1901, passed an ordinance creating the Committee on Local Transportation. It was made the special duty of the newly created committee "to carry on any work of investigation that may have been left uncompleted by the Street Railway Commission, to consider and devise plans for meeting the situation that may arise when the street railway ordinances come up for action," and "to make special study of the kind, quality and sufficiency of the local transportation service and facilities of Chicago, and to make to the City Council from time to

time, as it may see fit, recommendations looking to the improvement of the same."

The committee was to consist of nine members of the City Council and the Mayor was ex-officio a member. The committee as first constituted consisted of Frank I. Bennett, William S. Jackson, Milton J. Foreman, Ernst F. Hermann, William Mavor, William F. Brennan, Francis D. Connery and John D. Minwegan. These men were appointed by Mayor Harrison because of their known character and strength and because they had avowed their devotion to the cause of the people in securing a just recognition of the people's rights in future dealing with the Companies. The committee throughout its history has been composed of the most earnest and serious-minded members of the Council and has been a recognized and dominant force in the domain of traction. During its existence it has not been possible for the traction interests to secure without question the passage of ordinances drawn by skillful traction attorneys. Its work has been conscientious, aggressive and constructive, in direct contrast from the methods formerly pursued.

The first report of the committee was made December 11, 1901. It reported that immediate municipalization of the street railways was out of the question and that its practicability should be left open for the wisdom of the future to decide. It deplored the fact that the Legislature had not seen fit to enact laws which would enable the City to own and operate the street railways, inasmuch as such power, if possessed by the City, would greatly aid it in securing advantageous terms with the Companies. Nevertheless, it advocated an early settlement of the traction question to the end that the public might have adequate service.

The one point on which it laid more stress than any other was that of municipal control. It strongly recommended that everything pertaining to the operation of street cars, their running time, the kinds of cars in use, heating, lighting and ventilation—in fact, everything in which the people had an interest as adding to or detracting from their comfort in the use of street cars—should be under the control of the City Council.

The report further stated as the opinion of the committee that no satisfactory solution of the problem could be had that did not provide for the complete unification of the street car interests in the downtown district. It recommended that within such district no exclusive rights be given to any company, but that each Company should be required to operate within the district upon such streets in such manner as the City authorities might from time to time determine. It recommended a complete rearrangement of routes and terminals under the advice of an expert and the compulsory construction by the Companies of lines of railway in accordance therewith.

On the question of fares and compensation, it recommended a lowering of fares and ample compensation as a principle to be followed, but left the details open to consideration dependent upon other terms and conditions of the grant. The question of change of motive power and of subways required the advice of engineering experts in order to determine what was best for the city. It recommended the abandonment of the cable, the exclusion of the overhead trolley in the downtown district, and, if practicable, a subway, which the Companies should agree to use when built and for which they should pay a just rental. Every

Company accepting a grant should be required to agree that all its licenses, franchises and grants from whatever source derived should expire at the same time, and the grant itself should be limited to twenty years, but terminable at the will of the City by purchase of the tangible properties at any time after ten years.

Accompanying the report was the outline draft of a renewal franchise, embodying the recommendations of the committee.

XXIII

REPORT OF THE CIVIC FEDERATION, 1901

The activities of the City Council were but the index of the increasing interest among the people and of the growing demand for a settlement of the traction question only on complete information and along well-considered lines. This was manifest in discussions in the press and in the City clubs and by investigations undertaken under private initiative. The most important of these latter was that of the Civic Federation of Chicago.

In June, 1898, after it had become apparent that a fifty-year franchise extension could not be had from the State Legislature nor the City Council, Mr. Yerkes, at the invitation of the Federation, gave a public address on the street railway situation, in which he expressed the desire to secure co-operation in procuring needed franchises. Mr. Newton A. Partridge, speaking for the Federation, insisted that the public could not be expected to approve of any plan suggested by the railways without having full information as to all data regarding the operation of the railways. This information, for the most part, was contained only in the books of the Companies. Subsequently Mr. Yerkes consented to the examination of the books of the Companies under his control, and the South Side Company agreed to do the same. A sub-committee of the Committee on Street Railway Franchises, consisting of William A. Giles, chairman; Adolph Nathan, Josiah

Lombard, Newton A. Partridge and John H. Gray, undertook the investigation. Edmund F. Bard, an expert accountant, was engaged to examine the books. His reports were edited by Milo Roy Maltbie, Ph. D., Editor of *Municipal Affairs,* and issued in 1901 as the Report of the Civic Federation on the Street Railways of Chicago.

This report is especially valuable in that it presents information of the financial operations of the Companies, based upon their own books. It contains data as to the progress made from time to time in construction; the original cost of construction and equipment; the expense of making the extensive changes from horse to cable and electric power; the manipulations of stocks and bonds by which a highly overcapitalized condition was brought about; the immense profits to stockholders in the form of cash, stock and bond dividends and as to certain peculiar methods of financing certain improvements, especially of the North and West side Companies. It would not be possible nor desirable here to attempt to analyze and present the figures and facts shown by Mr. Bard. They can best be had from the report itself.

It is manifest that in any going concern allowances should be made for depreciation and improvements. The items for depreciation and disuse should be marked off from the assets and cared for out of the earnings. Improvements that merely take the place of disused or out of date material should be charged to the same account. The Companies, however, carried on their books as assets all that had ever been expended by them in construction and equipment and issued stocks and bonds to meet every need for improvement and extension. The South side Company

was originally capitalized at $100,000. At the time of Bard's examination of the books in 1899, the total original cost of construction and equipment was $12,984,460.71. This sum represents the entire amount expended for those purposes up to that date. Nothing had been marked off for depreciation or disuse. It includes the large sums expended in making improvements and extensions and in changing from horse to cable and electric power. It represents the wornout trucks, disused cars and dead horses of an earlier day. When additional money was needed the Company would issue new stock and sell it to the stockholders at par value, although the market value might be two or three times greater. In this way the capital stock was gradually increased to $18,000,000. The profits to the stockholders were represented by cash dividends, stock dividends and the premiums derived from stock which had a high market value, but which was sold to them at par. The Company was thus carrying a large amount of dead assets as a setoff against liabilities which in the hands of the holders were exceedingly lively. From January 1, 1882, to January 1, 1898, the total of cash, stock and bond dividends, including premiums thereon, amounted to $37,602,187.50, or an average of 44.63 per cent per annum for sixteen years. From 1898 to 1901 the average was nearly 31 per cent per annum. The real value of the franchises was obscured.

On the North and West sides a most complex situation had developed. There were three strata or layers of Companies. At the top was the Chicago Union Traction Company; the next layer below on the North Side was the North Chicago Street Railroad Company, and underlying that was the North Chicago City Rail-

way Company; on the West side, the second layer below Union Traction was the West Chicago Street Railroad Company, and underlying that were the Chicago West Division Railway Company and the Chicago Passenger Railway Company. Here was work for an archeologist. Construction contracts, leases, operating agreements, issues of stocks and bonds were piled one above another in confusing mass so that a clear vision of any one Company's standing, the real value of its securities or of the franchises which the City had bestowed upon it was impossible. Thus was worked a practical fraud upon the investing and franchise-giving public.

But this was not all. Yerkes and his associates were not content to defraud the public; through the United States Construction Company they despoiled the minority stockholders of the original Companies of millions of dollars. Soon after Yerkes secured a majority of the stock in the North Chicago City Railway Company he organized the North Chicago Street Railroad Company. As controlling owner of both Companies he negotiated an agreement between them by which the former leased to the latter its properties and franchises for 99 years, in return for which the latter agreed to pay the interest on all bonds and mortgages of the former outstanding and to be created and also to pay the former quarterly the sum of $37,500, the same being a 30 per cent dividend on its capital stock. The latter Company also agreed to construct a cable line on North Clark street, the cost of which was to be borne by the former Company by the issue of its bonds at 6 per cent. A strict account of the cost was to be kept and the exact amount expended was to be the basis of payment between the two Companies. On

the same day on which this agreement was made the North Chicago Street Railroad Company entered into an agreement with the United States Construction Company, also controlled by Yerkes, to construct the cable road. Under this agreement the road was built and the Construction Company received in cash, bonds of the old Company and capital stock of the new Company the total sum of $6,208,908.39. This sum was charged against the old Company. The actual cost of constructing the road, according to Mr. Bard's statement, could not have exceeded $3,141,741.32. Thus was the old Company swindled out of $3,067,-167.07—the difference between these amounts. To Yerkes and his associates it could make no difference except as it swelled their individual revenues, since they owned the majority of the stock of both Companies; but to the helpless minority stockholders it was a fraud of stupendous magnitude. By similar manipulations on the West side the Chicago West Division Railway Company was overcharged for cable and electric construction the sum of $2,541,501.13, which, as on the North side, affected principally the minority stockholders. In both cases the United States Construction Company was used as a mere instrument by which Yerkes and his associates overloaded the traction properties for their own benefit and for the undoing of the minority stockholders and the public.

These and many other important facts were revealed by the work of Mr. Bard. The report became an invaluable aid in the subsequent consideration of the traction question.

XXIV

THE ARNOLD REPORT, 1902

Following the recommendation of the Committee on Local Transportation, the City Council, on the 26th of May, 1902, authorized the Mayor and City Comptroller to execute a contract with Bion J. Arnold, as expert engineer, for the rendering of such services as might be required by the committee, "in procuring information and furnishing estimates and opinions and in the preparation of a general report . . . in relation to the cost of operation and earnings of any traction Company or Companies, the capitalization of existing Companies, all financial and scientific facts, practical matters, and statistics in relation to the same, valuation of existing traction plants, cost of new system, estimate of earnings of new system, design for rails or any other part of the equipment of traction companies, and such other matter as may pertain to the work of said committee." The contract actually entered into with Mr. Arnold required him to report as to every phase of the situation then existing and also the details of a new system, including estimates of cost, net earnings and probable increase of business from which rates of compensation could be computed, estimates of passengers carried during different hours of the day, the feasibility and desirability of an underground conduit system in the downtown district and the cost of constructing and operating the same, a

rearrangement of terminals and routes so as to secure the best service, and preliminary plans for a system of subways in the downtown district, which, operated in connection with or independently of the surface lines, would adequately accommodate the traveling public, provide for an increase of traffic in years to come, relieve the congested condition and create a much larger area available for use by all lines of business. The report was submitted November 19, 1902.

With respect to transportation, says the report, Chicago should be regarded as one city, not three. Divisional lines should be obliterated, as far as possible. A street car passenger should be carried over the most direct route between any two points within the City limits for a single fare. Complete unification of ownership and management is the best plan for realizing the One-City-One-Fare idea, although the same end might be accomplished less satisfactorily under divisional ownership, by a plan of through routing of cars, joint use of tracks and interchangeable transfers. A unified company could afford to conduct the transportation business of Chicago on the basis of a single fare for a continuous ride anywhere within the City limits. Routes through the business district should be substituted for downtown terminals, wherever possible.

The report outlines two plans for a subway system, which it says must eventually be built. Plan No. 1 provides for three North and South subways, from Fourteenth street on the South to Indiana street on the North, and two subways entering the business district from the West side and looping back at Clark street. The other subway plan provides practically for the same North and South high level subways in combination with three or more low level subways from the

West side passing under the North and South subways and reaching Michigan avenue. In the interest of navigation the tops of the tunnels should be removed, leaving the lower parts for utilization later as parts of a future subway system.

The report further presented a plan for a new, reorganized and unified combined and subway street railway system, comprising the lines of the Chicago City Railway Company, the Union Traction Company, the Chicago General Railway Company and the Chicago Consolidated Traction Company within the City limits, and new lines necessary for the proper connection of all parts of the system.

For the immediate improvement of terminals and service the report presented plans for the rerouting of surface terminals in the business district: (1) under the existing divisional ownership and operation, (2) under the joint use of tracks in the business district under divisional ownership, and (3) under unified ownership and management. Under any one of these plans which might be adopted electric power should be substituted for cable and all cars from the West and North sides should enter the business district over bridges pending the construction of the subways.

Contrary to the claims of the Companies, the report stated that the operation of cars in Chicago by the electric conduit system is practicable and feasible. It recommended the prohibition of the overhead trolley within the district bounded by Twelfth street on the South and the river on the North and West.

These are some of the salient features of the report. No adequate conception of its completeness and value can be had without a detailed study. It consists of 310 pages of matter, a series of fourteen comprehen-

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sive maps and a large number of charts, diagrams and tables, illustrative of the text. It shows with mathematical detail the defects of the existing systems and presents with equal accuracy and certainty the specifications for a new system adequate for the needs of the growing City. It has become the text book of Chicago traction.

XXV

DEFECTS OF THE NON-SYSTEM

The Companies had occupied the streets for more than forty years and had been given for the most part full and free sway. It was their first duty, moral and legal, to give the City the best service possible.

As shown by Arnold, the best service could be realized only under unified ownership and management. "Chartering Companies and granting privileges by divisions to separate ownership not only saddled upon the people a multiplied system of fares within the limits of the City, but made it impossible to traverse the small area in which the division converged without payment of two fares. To this double fare in the business district can mainly be charged all the extraordinary congested condition not occasioned by the course of the river." "To this mistake, made in the infancy of the transportation business, can be traced the primary cause for the present demand for a change in transportation facilities."[1]

The distinguishing feature of a unified service would have been a system of through routes traversing the business district in the place of loops and stub terminals, so arranged as to give easy access to any location and permitting the passenger for a single fare to pass through the district without alighting.

[1]Arnold's Report, page 25.

For this initial mistake, however, the City was not primarily to blame. Indeed, there are indications to show that the original idea, both with the City authorities and the promoters of the early street car enterprises, was to have one service for the entire city. The proposed ordinance of March 4, 1856, covered streets in the North and South Divisions and that of July 19, 1858, covered streets in the South and West Divisions. Each provided for a continuous ride for a single fare for any distance within the City limits. The ordinance of August 16, 1858, covering streets in the South and West Divisions, contained a similar provision. It is not improbable that if any of these ordinances had gone into effect the grantees would have been given the further privilege of occupying the remaining division of the City under the provision of a single ride for a single fare.

However, as noted in an earlier chapter, the power of the City authorities to authorize the use of the streets for street railway purposes was early called in question and the City had little to say for or against divisional ownership. That idea was formulated by the Companies and carried out through the Legislature in the acts of February 14, 1859, and of February 21, 1861, which incorporated the Companies and divided the territory among them. It was further consummated by the agreement between the South and West Side Companies not to enter each other's territory and the avoidance by them of the provision in the original ordinance of one ride for one fare in the two divisions. As the City developed the principle of division was extended until, in 1898, the transportation service of the City was "in the hands of nearly thirty Companies, each with its separate organization and

management, each with more or less of a monopoly in its particular district, and each, as regards other lines, naturally administered under an individualistic motive to enhance its own interests rather than under a broad purpose to develop the means of transportation as a unified system." Later, in 1889, when the Chicago Union Traction Company took over the principal North and West Side lines and the Chicago Consolidated Traction Company united the outlying lines, the number of operating companies were lessened, but without substantial benefit to the public.

With the divisional principle established it would seem that the Companies, resting under the obligation to give the best service possible under that form of control, would have so co-ordinated their lines at points of contact, and especially in the business district, as to relieve the situation of its apparent grievous difficulties. This would have involved an intelligent and systematic arrangement of loops and terminals with reference to one another and to the needs of the public. Instead, the reverse was the case. "The present system," says the report of the committee on Local Transportation (1901) "of down-town terminals, if it can be called a 'system,' is probably the worst that can be conceived. We have here, in the heart of the city, the operation of cars on almost every street, the continuous crossing and re-crossing of divers lines in a manner which seems planned, if there is any plan to it, for the purpose of creating the greatest possible confusion."

On pages 31 to 53 of his report, Arnold gives a detailed statement of the then existing terminal facilities and characterizes them as utterly inadequate. It is there shown that by crowding these facilities to the

limit it would be physically impossible to handle the traffic in the morning and evening rush hours. Entering the business district during the hours of maximum traffic were 1,379 cars, consisting of 772 cable cars, 97 electric motors trailed in cable trains and 510 electric cars. The cable cars and the electric motors trailed thereto were operated around five loops and the 510 electric cars were operated around one loop and on five stub end terminals. Two of the cable loops crossed each other at four different points, entailing constant difficulty in operation and lessening their capacity. A variety of other causes,—the lack of power at the power house, the crossing of team traffic,—worked to the same end.

The traffic of the South Division was accommodated by the Wabash avenue loop, the State street loop and the stub terminals at Clark street. The Wabash avenue loop had a headway capacity of one car for every 18 seconds, the State street cable and Clark street terminal, one car for every 26 seconds. Arnold estimates that in 1902, 48,135 passengers per hour during the rush hours, were carried over the South side lines and that it would require a little closer headway than 15 seconds for every car to handle the traffic properly. The cars upon which this estimate was made were double truck cars capable of carrying comfortably 60 passengers, while the cars in actual use by the South side company were for the most part the short single truck cars, seating about thirty passengers. Similar estimates were made as to the traffic of the North and West Divisions.

When two or three times the number of passengers offered themselves as could be comfortably carried,—which regularly occurred twice a day—the inevitable

result was discomfort in the extreme. There would be a rush for the seats, a few seated on the laps of the fortunates, a crowding of the vacant aisles and spaces, a hanging to the straps, the cheery voice of the conductor, "Step forward, please," more crowding, an overflow to the platforms and bumpers and then off to the next crossing to take on a few more passengers. The sickening horrors of those overcrowded, foul smelling, disease spreading cars, where all were packed together with indecent proximity, will not be forgotten by any who had the experience of riding in them.

Other causes also tended to impede traffic and cause inconvenience. The Companies continued to operate their cars in trains even after it had been demonstrated elsewhere that the single car service was much superior. Thus the general street traffic was delayed, stops were more frequent, and passengers on the forward cars of the train were compelled to alight and walk in the dust or mud of the streets to the street crossing. It is to be noted that the cables were constructed for the train service and later the Companies sought to change from cable to electric power. The City, however, prohibited the use of the overhead trolley in the business district and the Companies declared the underground conduit system too expensive and not practicable in Chicago. Subsequently the City permitted the use of the overhead trolley on certain streets, but did not extend it to the cable lines. The Companies did not see fit to rebuild their equipment for the single car service. Arnold reports the electric underground conduit system as wholly practicable and feasible in Chicago.

Now that the cable has passed away, the situation

has been relieved of those difficulties peculiar to that form of power. At the best, however, the facilities are wretchedly inadequate and conducive of great inconvenience. They fail to provide comfortable passage for the large number that offer themselves during the rush hours. For the most part, each loop merely skirts one edge of the business district, so that the passenger may have to walk a possible half dozen blocks to reach his destination. The through passenger from one division to another necessarily has to transfer and usually has to walk from one to two blocks in so doing. If he is a stranger, unaccustomed to the non-system, he is often compelled to rely upon uncertain information derived from uncertain sources and his confusion is complete. It is not to be denied, however, that an extended study of the non-system, involving something less than a college education, and a carefully-thought-out use of transfer lines in reaching the down-town district would in some instances have an alleviating result.

XXVI

ATTEMPTS TO REGULATE THE SERVICE

At a hearing in the traction case in the United States Circuit Court, Judge Grosscup made this remark:

"The evils that are thick upon us are the result, first, of the cupidity of these companies in attempting to get out of the thing in the form of dividends and interest what ought to have gone into betterments and improvements. Secondly, the inattention of the city to compel good service, or in procuring a contract at the beginning, under what we will assume to have been its power, that would have given good service. * * * I do think that any man on either side of this controversy can honestly say this, that so far as the Companies have been concerned they have not lived up to their implied obligations to the public, whether they have lived up to their express obligations or not. That, so far as the City administration for the last twenty years has been concerned, it has not been as diligent and as capable in the requisition it made upon the public utility corporations as it could have been and as it ought to have been. And between the lack of discipline and the willingness to get away with all there is in it in the form of dividends, the service has gone to the devil."

The evils arising from divisional ownership and operation and the inadequacy of terminal facilities

were inherent in the non-system, and were practically without remedy through the intervention of the City. The City could scarcely compel the Companies to adopt an arrangement as to rates and transfers so as to provide a more nearly unified service or compel a readjustment of terminals to suit the needs of the traffic. No order, however stringent, could have been effective beyond the carrying capacity of the terminals and the utmost diligence on the part of the City to compel good service could have done but little to remove the chief causes of complaint.

The power to regulate the carrying of passengers in vehicles was given the Common Council by the City Charter of 1851. In the revised charter of February 13, 1863, and in the City and Village act of 1872, under which the City was reincorporated in 1875, this power was applied specifically to the running of street cars. Aside from these provisions, the City would doubtless possess such authority under its broad police power. It is to be said, however, that those powers were as yet only general; they had not been defined by court decisions; the public and the city authorities were not assured of their specific rights and an attempted enforcement of the conditions of good service without the companies' willingness to grant them could only have as its principal result protracted and irritating litigation.

The City, however, was not wholly remiss. On March 18, 1878, it imposed a license fee of fifty dollars upon each car operated within the city limits. The Companies contested payment of the license. After five years' delay and litigation, a decision in favor of the City having been rendered in the United States Circuit Court, a compromise was made by

which the Companies paid twenty-five dollars a car, one-half the amount provided by the ordinance for the time already expired, and agreed thereafter to pay fifty dollars for each car, thirteen round trips of a car a day being the unit. This compromise was really one of the considerations entering into the extension ordinance of July 30, 1883, and was incorporated in that ordinance. Otherwise the litigation would doubtless have been more prolonged.

In 1881 the City Council passed an ordinance requiring the Companies to provide, on each of their lines, sufficient cars for the needs of the public. So far as known, the City never sought to enforce this ordinance; nor the Companies to comply with it.

For years, the Companies operated their slow-moving horse cars without heat. In response to public protest, they scattered loose straw and hay upon the floors of the cars and their suffering patrons would gather it about their freezing feet or place it between their shivering knees or spread it in bundles upon their laps in the vain endeavor to extract therefrom a modicum of heat. The Companies said the heating of cars was unhygienic. Eventually, little dinky heaters, insufficient for the purpose, were placed in the South side cars.

The early ordinances did not provide for the heating of cars, although later a few scattering ordinances contained such provision. On the 26th of January, 1891 (Council Proceedings (1890-91), p. 1476), the Council under its power to regulate street car traffic, passed an ordinance requiring every street car company in the city to heat its cars, from October to April, inclusive, "sufficiently to make them comfortable for the transportation of passengers."

On February 9, 1891, the date when the ordinance was to go into effect, a reporter from the Tribune made a tour of the North and West side lines, but found few warm cars. One conductor said: "Of course there's a stove in the car, but it ain't hot;" another said his stove was "busted"; a third conductor had a roaring fire in an oil contrivance which he called a stove and the air was almost suffocating with kerosene fumes; a Canal street conductor said: "Wat's de use in havin' stoves? People as rides in these cars don't have no stoves to hum."

On February 11, judgment was entered against the Chicago West Division Railway Company, for failure to heat its cars in a suit brought by the City. The Company appealed the case to the Criminal Court and it was there taken under advisement by Judge McConnell. The Company admitted its cars were not heated but denied the right of the City to compel the heating of cars as provided in the ordinances. Judge McConnell must have thought hard; he certainly thought long, for the weary months of winter passed; the people froze by day and nursed their chilblains by night, and still no decision; but when the balmy days of June were come, on the 15th day of that month, when the birds were singing cheerily in the tree-tops and the sportive lambs were skipping over the lea and all was sweet and lovely and warm, Judge McConnell decided adversely to the City. The Companies did not have to heat their cars; the people must cease to grumble and be content. In the following winter some apologetic stoves were put in the cars; but no genuine lover of the truth will ever say the cars were comfortably warmed. Sometimes they were and sometimes they were not. In general, the

people had to be satisfied with a pale glow upon the isinglass.

With the advent of the cable and electric systems, street car accidents became alarmingly frequent. The cars were run without fenders long after the other principal cities of the country had adopted some means of protection against the rapidly moving cars. The protests of the public had no effect. Finally, an ordinance designed to compel the Companies to equip their cars with fenders was passed September 27, 1897. The Companies did not comply with the ordinance and upon more careful examination, its wording was found so defective that the city feared it could not be enforced. Another ordinance to the same effect was introduced and passed July 6, 1898, and the Companies were given until September 1, 1898, nearly one year from the passage of the first ordinance, to meet its requirements. After numerous delays and threats of prosecution, the first fender appeared on a West side car September 27, 1898 (*Chicago Record,* Sept. 28, 1898, p. 12). This was only a specimen fender on its trial trip and it was two or three months more before the North and West side cars were fully equipped. The South side Company seemingly took no steps to comply with the ordinance, and it was not until after many suits were brought that the Company finally yielded.

The matter of a continuous ride for a single fare has been the cause of much irritation on the part of the public and of evasion by the Companies. The early acts and ordinances made express provisions for the extension of the lines of the Companies in their respective divisions to the then limits of the city and in the outlying districts of Cook County. It was

specifically provided that the rate of fare for any distance should not exceed five cents. Subsequent ordinances, granting franchises for extensions and cross lines, as a rule provide for transfers without extra charge. In various ways the Companies have sought to evade their express obligations in the giving of transfers, and the City has been compelled to take action to protect the public.

There is one particular in which the City was clearly negligent. The ordinance of August 16, 1858, affirmed by the act of February 14, 1859, which authorized Parmalee and others and their successors, the Chicago City Railway Company, to construct and operate lines in the South and West Divisions, provided for a single fare throughout the two divisions. When the South side company deeded to the Chicago West Division Railway Company its rights and privileges in the West division, the two companies ignored this provision of the original ordinance. It was clearly the duty of the city to compel the companies to co-ordinate their lines at points of convenient contact and interchange transfers without extra charge to the passengers. Pending litigation to this effect was begun too late to be of avail.

In general, the South side Company has complied more closely with its duty in this respect than the North and West side Companies. In common with those companies, however, its rules concerning transfers have often been confusing to the public and evasive of the principle of one ride for one fare. At one time in its history, it required the passenger to secure his transfer just before arriving at the point of intersection; at another time, it required him to demand his transfer at the time of paying his fare; at

another time, the former rule prevailed on some of the North and South lines while the latter prevailed on the others. The juggling of these rules inevitably led to the payment of many double fares. The South side Company also had for a long period of time the rule not to issue a transfer on its cross lines except upon payment of a cash fare. The result was that a passenger traveling North or South, having been transferred to an East or West line, could not pursue his journey in the same general direction in which he started without payment of an extra fare.

On the North and West sides, a more ingenuous device was invented for the collecting of double fares. When in 1886 and 1887, Mr. Yerkes organized the North Chicago Street Railroad Company and the West Chicago Street Railroad Company, he conceived the idea of incorporating new companies to operate in the outlying districts as feeders to the main systems. The old companies ceased to extend their lines; the new companies built their lines outward from points connecting with the old companies. From 1889 to 1895, eight of these feeder Companies were organized, three of which were physical extensions of the West Chicago Company, three of the North Chicago Company, and two dove-tailed into both systems.

The feeder companies were mere dummies. Their lines were constructed with money furnished or guaranteed by the old companies. Under operating agreements, their entire management was in the control of the old companies. Cars were interchanged, employes transferred and car lines used without charge or account. In general, the officers and heads of departments of the old and the feeder companies were identical. Physically and in all essential points there

was but one West side system and one North side system; only in the most technical sense could the feeder companies be considered as entities.

The Chicago Consolidated Traction Company was organized January 28, 1899, and acquired the properties of all the feeder companies. The Chicago Union Traction Company was incorporated May 24, 1899, and acquired by lease the properties of the North and West Chicago Companies. Thereafter the Chicago Consolidated Traction Company bore to the Chicago Union Traction Company the same relation which the feeder Companies had borne to the West Chicago Street Railroad Company and the North Chicago Street Railroad Company. Its bonds were guaranteed by that company; its officers were for the most part identical and the two companies had operating agreements similar to those previously existing between their predecessors. In essence and in fact, there was but one company, the Chicago Union Traction Company; but on the ground of technical ownership in separate companies, transfers were refused and double fares collected.

On June 26, 1890, the City Council passed an ordinance requiring every street railway company operating in Chicago to issue transfers without extra charge at all intersecting points. This ordinance was re-enacted as a part of the Revised Code of the City on April 8, 1897. It can readily be seen that the complex system of subterfuge erected by Yerkes under the pretense of separate ownership and the attempt to collect double fares by means of it was in every honest sense a violation of the express obligations of the Companies imposed in the franchise ordi-

nances and also of the requirements of the ordinance concerning transfers.

In December, 1901, the City, in response to the indignant protest of many suffering patrons of the roads, brought a number of suits before Justice Gibbons against the Union Traction Company to recover penalties for the refusal to issue transfers as provided in the transfer ordinance. Eleven of these cases were tried; appeals were taken to the Criminal Court where decisions favorable to the City were given by Judge Ball; which decisions were afterwards affirmed in all points by the State Supreme Court. Three of the cases were for refusing transfers on lines of the Chicago Union Traction Company at points where the North Chicago Street Railroad Company and the West Chicago Street Railroad Company came in contact; the other eight cases were for refusing transfers from the Union Traction Company to the Consolidated Traction Company. A rehearing was denied December 16, 1902. The opinion was written by Chief Justice Magruder. Of the latter set of cases he says, 199 Ill., p. 608:

"Whether the lessor companies built and operated the extensions under the names of these various subordinate companies for the purpose of avoiding compliance with the terms of the ordinance, is a matter that is not established by the evidence. But the evidence shows that the existence of such separate organizations made possible the collection of double fares over the lines as extended."

The purpose of this chapter has been to show conditions as they existed in 1903 just prior to the expiration of the extension ordinance of July 30, 1883; but brief reference may be made to more recent

phases of the same subject. The various attempts of the City to enforce the conditions of good service can not be said to have produced that effect, and on July 10, 1905, a comprehensive ordinance to insure the safety and comfort of passengers was passed. This ordinance required the companies to heat their cars at not less than 50° F.; to have thermometers in plain view; to keep the cars "reasonably clean, disinfected and so ventilated as to be free as practicable from foul and vitiated air; to keep the tracks on which such cars are operated and the car itself in such condition as to insure and provide the reasonably safe, convenient and comfortable transportation of passengers without unnecessary noise and jolting; and to furnish a sufficient number of cars on each separate line, to carry passengers comfortably and without overcrowding."

The attempted enforcement of the ordinance was met by the Companies with their usual tactics. After a large number of suits had been brought by the City for violations of its provisions the Companies secured an injunction from Judge Mack of the Circuit Court against their further prosecution or the bringing of new suits. In October, 1906, the State Supreme Court reversed Judge Mack's decision and left the City free to proceed with the suits.

The experience of the City shows the futility of any attempt to regulate the service under the police power. The remedies of the law are inadequate. The best the City can do is to pass an ordinance, provide a penalty for its violation and then prosecute and collect fines for the violations. If the Companies are willing to give good service, there is no necessity for the ordinance in the first place,

or there will be few violations. If the Companies are unwilling to give good service, the constant prosecutions only give rise to an irritating situation which in itself is inimical to good service. Moreover, it is small comfort for a passenger whose feet are cold, to know that a certain ordinance requires warm cars, or that some other passenger once upon a time had cold feet and enforced a penalty therefor; or for one who is crushed beneath the wheels of a fenderless car to know that the ordinance requires a fender, that the Company can be fined for not having one on this particular car and that the heirs of a person crushed like himself once collected damages from the company for a similar crushing. There is only one effective method of dealing with a company unwilling to give good service—namely, *Ouster.*

Authorities: Judge Grosscup's remarks, Guaranty Trust Company v. Companies, Vol. XV, Doc. 357, p. 161; Car Heating Ordinance, Council Proceedings, 1890-1, p. 1476; City v. Railway Company, Criminal Court, No. 8609; Chicago Union Traction Co. v. City of Chicago, 199 Ill. 484, 579.

XXVII

NEGOTIATIONS FOR FRANCHISE RENEWAL

The extension ordinance of July 30, 1883, which covered all franchises granted prior to that date, expired July 30, 1903. At the end of the period, the main part of all three systems, including the trunk lines and many of the most important branches, would revert to conditions existing prior to the passage of the ordinance. Except for their alleged claims under the ninety-nine year act, the rights of the Companies in nearly all of the North side lines and in many of the South and West side lines would wholly cease; while the rights in the remaining South and West side lines could be terminated at any time by the exercise of the City of the option to purchase the railway equipment, as provided in the original ordinances.

On March 18, 1902, the City Council passed a resolution, inviting the Companies to enter into negotiations with the City for the renewal of their franchises. In the event of the failure of the Companies to begin such negotiations or to present reasonably satisfactory propositions by June 15, 1902, it was voted as the sense of the council that the City should call the attention of capital to the fact that the City had valuable transportation privileges to dispose of. No action was taken under this resolution either by the City or the Companies.

But in the early part of 1903, the Companies began to make overtures. This was the situation then existing. In 1895, the Companies had sought an act of the legislature permitting the City Council to grant a fifty year franchise; they failed because of the veto of Governor Altgeld. In 1897, they had sought the passage of the Humphrey bills which in themselves extended the franchises fifty years; they failed because of the indignant protest of the people, but succeeded in securing the enactment of the Allen law authorizing the City Council to grant a fifty year franchise. In 1898 they had sought from the City Council a fifty year franchise under the Allen law, but failed because of the protest of the people, the firm position taken by Mayor Harrison and the changed personnel of the Council. In the meantime, their railway systems had become antiquated; their equipment old and worn-out; their service bad beyond description. They had signally failed in every essential particular to perform their obligations, express or implied. To further their ends, they had spent money lavishly to elect "friendly" aldermen and legislators and thereby had secured "friendly" assistance in legislation; they had corrupted and bribed court officials; they had bought disagreements of juries to prevent the collection of the just claims of those who had been crippled by their negligence; they had strewn their pathway with the wrecks of blighted lives and reputations. If they had been men and not corporations they would scarcely have come seeking favors; but having no souls, they of course could not feel shame. Such was the situation in 1903 when representatives of the Companies appeared before the

Committee on Local Transportation and sought a renewal of the expiring franchises.

The moral advantages were all with the City. The defeat by the people of every attempt of the Companies to gain unfair advantages, the successful wresting of the Council from company influence, the moral processes by which the people and the Council had been able to put aside a defensive attitude and enter upon an aggressive constructive policy were elements of great strength in its position. In addition, the Committee on Local Transportation was composed of the strongest members of the Council, the majority of which had been elected as "aggressively honest men." They were the representatives of an onward movement for the betterment of conditions; for their guidance they had the various reports heretofore described which contained full data as to existing systems and plans for a future system adequate to the City's needs, while in their support, the people stood firmly for fair treatment of the Companies and ample protection for the public.

How pleasant, just after the sudden jolt of a Cottage Grove car has shivered one's spine, to lapse into reverie and recall the dreams and visions of bygone days! Whenever a critical time occurred in traction affairs, one R. R. Govin, who must be a delightful gentleman, would inevitably stroll in from New York and paint the most beautiful pictures of a rejuvenated service, wherein roadbeds would be as marble floors and the riding in street cars would become like skating on rollers, smooth and gliding—a veritable luxury. So on this occasion, millions of dollars, forty millions, fifty millions, seventy-five millions, untold millions were the glowing figures, mathematical and

rhetorical, with which Mr. Govin enlivened the hopes of the people. These vast sums were in readiness to be spent on Union Traction alone; only the investors must be protected. In other words, says Mr. Govin, says he: "Be good and you'll be happy."

In the negotiations which followed, the Companies were represented by W. W. Gurley and J. S. Auerbach for the Union Traction Company and Col. E. R. Bliss for the Chicago City Railway Company. The Transportation Committee consisted of Frank S. Bennett, Ernst F. Hermann, William Mavor, Francis D. Connery, William S. Jackson, John Minwegen, Milton J. Foreman, Thomas Carey, Walter J. Raymer, Charles Werno, Harry F. Eidmann, William T. Maypole and Herbert W. Butler. In the discussions, Mavor, Bennett and Hermann were the leaders for the committee. Mavor, honest, vigorous and thoroughly informed, was opposed to Auerbach, suave, incisive and persuasively gentle. The members of the committee stood for convictions which appealed to their consciences with moral force. The representatives of the Companies were paid lawyers, employed to uphold supposed technical rights and to secure the best bargains possible. They had no moral force behind them; indeed where moral issues are involved it may be better not to have lawyers.

The first meeting between the committee and the traction representatives was held January 21, 1903. On that occasion it developed that a protective committee of the stockholders of Union Traction and the underlying Companies had been formed, consisting of Walter G. Oakman, John J. Mitchell, Marshall Field, H. N. Higginbotham, John H. Wrenn, R. R. Govin, George E. Adams, H. B. Hollins, Norman B. Ream,

Charles Steele, P. A . Widener and Oakleigh Thorne, and that this committee would represent the Union Traction Company in the negotiations. To give this committee time to act, the meeting was postponed until February 4. An attempt was made to secure a statement of the attitude of the Companies on the ninety-nine year act, but none was made.

The people were hopeful. A genuine belief in the successful result of the negotiations seemed to prevail. Most of the aldermen had been elected on platforms pledging them to a twenty year franchise, improved service, ample compensation and a complete waiver by the Companies of all claims under the ninety-nine year act. The attitude of the aldermen was well known and assurances given in private interviews seemed to indicate that the Companies were willing to accede to these conditions. The settlement of the whole question seemed only a matter of detail.

On February 4, the outline ordinance presented by the Transportation Committee two years before was discussed section by section. On the questions of the elimination of the cables, of underground electric conduits in the business district, of universal transfers, the rearrangement of loops and terminals, improved equipment, the right of the City to regulate the service and the necessity for subways, the negotiations made headway; but on the questions of rates of fare and compensation, the length of the grant and the termination of all grants at one time, the terms on which the City might acquire the railways on municipalization and the waiver of the ninety-nine year act, no progress was made. Indeed, it became clear that there would be no waiver. On this question, the

representatives of the Companies agreed to make a definite proposition at the next meeting.

On February 12, the Companies presented the following proposition:

"The City to grant the right to operate the street railways for the period of twenty years, and at the expiration of this period the City to have the option to take them over, upon paying the then value of the tangible or physical properties for street railway purposes, and the existing rights (if any) in the streets of the City under the laws and ordinances now in force, this without prejudice to the rights of the City to maintain that no such rights exist.

"The value of the properties and rights (if any) is to be determined by appraisement in a manner specifically provided in the ordinance. If the city does not exercise its option to take over the properties and rights at the expiration of twenty years it shall have the right to do so at any time thereafter, and in the meantime the properties shall be operated upon the same terms as during the twenty years."

This proposition was in direct variance with all the contentions of the City for nearly a decade. First, it provided for a franchise of indeterminate nature. If the City did not take over the lines at the end of the twenty years, the terms of the ordinance remained in force. They could not be readjusted to meet conditions existing at the end of the term. Second, it left the ninety-nine year act alive. At the end of the twenty years, the City could recognize its validity and pay the Companies for the unexpired term or deny its validity and be compelled to enter upon a long litigation. "You give us the buzzard and you take the

turkey," said Mavor to Auerbach, when this proposition was presented.

The Transportation Committee made the following counter proposition:

"It is the sense of the committee that the grant be for a period of twenty years; that the City shall have the right to take over the properties after ten years, making allowance for the then value of the unexpired part of said grants as well as the then value of the tangible properties.

"The committee will consider at this time the value of all unexpired franchises including the value of the unexpired portion of the ninety-nine year act (if any) in connection with the question of compensation."

"In line with the foregoing the City Council will proceed with its endeavors to obtain enabling legislation permitting municipal ownership."

These two propositions were so at variance as practically to put an end to the negotiations. Another meeting was held February 16, at which Messrs. Bliss and Auerbach suggested that the validity of the ninety-nine year act might be tested during the life of the proposed franchise; then, if found valid, its value should be appraised and paid for by the City at the end of the term or at such time as the City should acquire the railways. The committee adhered to its first proposition to consider at once the ninety-nine year claims in connection with the question of compensation. The Companies wished to preserve for future consideration the value and validity of the ninety-nine year act; the committee refused to consider any ordinance which did not dispose forever of that vexed question. The Companies wished a franchise which,

although terminable by the City at the end of twenty years, would be continued indefinitely without readjustment of terms and conditions if the City did not exercise its option; the committee proposed a franchise terminable by the City at the end of ten years and with an absolute limit of twenty years, thus making possible a readjustment of terms and conditions at the end of that period. As neither party was willing to yield, the negotiations ceased.

Authorities: For copies of proposition by the Companies and counter-proposition by the Committee see Chicago Newspapers of February 13, 1903.

XXVIII

THE MUELLER LAW

The possibility of city ownership of street railways entered into the early thought of the community and was recognized in the ordinance of August 16, 1858, in the provision for the purchase by the City of the railway equipment at the end of twenty-five years. The idea never became dormant. At the end of the period, however, the issue had become clouded by the ninety-nine year claims of the Companies, and the passage of the extension ordinance of July 30, 1883, postponed all consideration of the subject until the expiration of that ordinance in 1903.

However, the City was without legal power to own and operate street railways and the need of enabling legislation for that purpose was recognized. As to the advisability of such legislation the City was a unit. Not that city ownership itself was universally approved. Many believed the contrary and with these the real issue of 1903 had reference only to the desirability of the legislation as a means by which the City would be able to compel better terms and better service from the Companies. At the same time there were large numbers who desired the legislation as a step toward the actual acquisition of the railways. No well defined lines separated these two classes and all worked together with practical unanimity.

As before noted, the City Council, acting through the Street Railway Commission, had sought to secure this enabling legislation from the Legislature of 1901 and had failed. The proposed measure had been smothered in committee. Another effort was to be made in 1903. In some part it had been an issue in the legislative elections. In the discussions between the committee on Local Transportation and the representatives of the companies over the question of franchise renewal, it was assumed that for the purpose of making effective any franchise ordinance that might be agreed upon, additional legislation would be necessary and that the City and the Companies would unite in an effort to secure it. The failure of the negotiations pointed inevitably to a contest and fixed the determination of the people to secure the legislation as their necessary aid. Without it, the City would be seriously handicapped under any circumstances that might arise; with it, the Companies could be compelled to accede to proper terms or suffer the alternative of a surrender of their privileges. Under conditions then existing, the legislation became imperative.

In previous years, whenever the wishes of the people clashed with those of the Companies over any question before the Legislature, one situation was sure to develop. It mattered not what the merits of the question might be or how unified the sentiment and action of the people. If the Companies wished the thing done, the legislators were ever ready at the opportune time. Nothing but the most violent protest of the people could prevent its consummation. If the people sought for favor, the legislators could scarcely be prevailed upon to act. The thing

would be buried in committee, amended to death or avoided by subterfuge and evasion. The people must rouse themselves to fever pitch to secure the desired thing. But the Legislature of 1903 was believed to be of higher order than its predecessors. Many of the old traction heroes were sleeping in their graves and their successors did not care to lie beside them. Although a majority of the legislators probably did not favor municipal ownership, it was believed they would recognize the situation in Chicago, would give the measure fair consideration and enact a law of which no one could make just complaint.

The drafts of two bills designed to accomplish the purpose were before the Council in January, 1903—one presented by Alderman Finn, the other by Alderman Jackson. On January 19, the latter was approved by the Council as the one to receive the sanction of the Council in the Legislature. Other bills were also drawn and were in readiness to be introduced either in the Legislature or urged before the appropriate committees. The bill on which the friends of the measure eventually united was drafted by Mr. Walter L. Fisher, assisted by Mr. George C. Sikes; was introduced in the Senate on January 21 by Senator Carl Mueller and referred to the Committee on Municipalities of which Mr. Mueller was chairman. In its original draft it deferred to the views of Mr. Mueller; in its course through the Senate, amendments drawn by Mr. Fisher were added and in the House other amendments were made and agreed to by those interested in its passage. In its final form, it represented the best bill that could be gotten through the Legislature in view of the bitter opposition which it encountered.

Interest in the subject had been aroused by the negotiations for the renewal of franchises pending before the committee on Local Transportation; this interest was greatly increased by the mayoralty campaign then in progress. The Democratic nomination was assured to Mayor Harrison whose attitude on traction was a matter of record. For the Republican nomination, John M. Harlan, representing the independent element of the party, made a vigorous canvass against Graeme Stewart, the organization candidate. Clarence S. Darrow had just returned from his efforts for the anthracite miners before the Roosevelt Commission; his following among the laboring classes was large and he was strongly urged to become the candidate of the Independent Labor Party. All these men were clear and positive for enabling legislation.

The declination of Darrow to become a candidate and the defeat of Harlan in the Republican convention narrowed the mayoralty contest to Stewart and Harrison. The convention which nominated Mr. Stewart was held March 7. In its platform it declared: "Enabling legislation should be passed at once by the General Assembly, which shall give to the City of Chicago the power and authority to own and operate street railways and other public utilities." The Democratic convention which nominated Mr. Harrison was held March 16 and adopted a platform which made the enactment of enabling legislation a necessary prerequisite to any consideration whatever of the traction question. This was made the great issue of the campaign. Mr. Stewart declared that Mr. Harrison had purposely delayed a settlement in order to keep the question alive as a political issue for his

own retention in office; that a settlement should be had at once and that the enabling legislation might be secured later. Mr. Harrison declared that a settlement could have been had at any time during the preceding four years if the Companies had been willing to accede to fair terms; that he was ready under proper conditions to proceed at any time; but that no settlement should be made until the enabling legislation had first been enacted.

Meanwhile the bill was making no progress in the Legislature. It remained with the Senate Committee on Municipalities until, in response to public demand, it was reported to the Senate with amendments on March 18 and ordered to a second reading. Action was again delayed. Nothing was being done in the House. The election was to take place April 7. The people began to question the sincerity of the Republican party. The doubt was increased when Cicero J. Lindly, Chairman of the House Committee on Municipal Corporations, announced to those requesting action that no consideration would be given the question by his committee until April 9, two days after the election. The argument was made that the Republican party, being in power in the Legislature, could readily secure the desired legislation and the failure to act promptly at a time when such failure might mean defeat in the Chicago election showed an unwillingness to act at all. The fear was expressed that unless the legislation was secured before election none would be had at that session. The effect of the delay, it was believed, would be disastrous to the Republican ticket. Mr. Stewart realized the danger and on the 26th of March sent urgent telegrams to Mr. Mueller and Mr. Lindly to press the

Mueller bill to speedy enactment. On the same afternoon Mr. Harrison addressed a letter to Mr. Stewart suggesting that a committee of fifty be appointed, each of them naming twenty-five, to go to Springfield and urge the passage of the bill before election. The committee was appointed and visited Springfield March 31. Two sub-committees were appointed, one to wait on Chairman Lindly and the other to wait on Chairman Mueller. Mr. Mueller agreed to advance the bill as rapidly as possible; Mr. Lindly would do nothing until after election.

The inability of the committee of fifty to secure action increased the distrust of the Republican party. Mr. Darrow, who had theretofore remained neutral, announced his intention to support Mr. Harrison and took the stump in his behalf the Friday night preceding election. There is no doubt but a large number of votes were thereby diverted from Mr. Cruice, the Independent Labor candidate to Mr. Harrison. The ultra-independent Republicans also voted for Harrison. No one questioned the sincerity of Mr. Stewart or of the main body of the Republican party, but the attitude of the party leaders coupled with the seeming indifference of the Companies to the proposed legislation pointed strongly to some subterranean connection between the two of which the people knew nothing. Such in fact seems to have been the case. As afterwards appeared, the "organization" leaders of the party, among whom were Richard Yates, Governor; William Lorimer, boss; John H. Miller, Speaker of the House, and Cicero J. Lindly, Chairman of the House Committee on Municipal Corporations, conspired to do the will of the Companies and to that end were willing to commit a greater of-

fense against the people than any attempted in the previous history of traction. These men decreed that no traction legislation should be had at that session and sought to enforce their decree even to the subversion of the State Constitution. Mr. Stewart lost the election by less than 8,000 votes, a sacrifice to this conspiracy of the leaders of his party, and the City of Chicago lost the opportunity of securing a mayor of strong integrity, of the most exalted civic ideals and of rare executive force.

Immediately after the election, the people renewed their efforts. In the Senate, Mr. Mueller had kept his word and with the assistance of Senators Parker and Campbell, had made such progress that on the 9th of April the bill passed that body by a vote of 46 to 0. On the 14th it was reported to the House and a futile attempt was made to take it up and consider it without reference; but Speaker Miller, who had already developed wonderful ability as an expert wielder of the gavel, had no difficulty in sending it to Mr. Lindly's Committee. On the same day, a large Chicago delegation appeared before that committee and strongly urged the necessity for the legislation. The demand was too insistent to be disregarded. Since something had to be done the "organization" got to work. The Mueller bill, it was said, was obscure and ambiguous. Another bill would be produced that would be simpler and more effective.

When the new bill, afterwards known as the Lindly bill and said to have been drawn by Representative Edward H. Morris, was introduced, the evident purpose of its sponsors became apparent. Besides many other defects, there was one provision in particular which rendered it wholly worthless. Both the Mueller

and the Lindly bills authorized cities to execute a mortgage or trust deed and to issue street railway certificates, pledging as security therefor the railway property acquired or to be acquired. Under the Mueller bill, persons securing possession of the property through foreclosure proceedings had the right to operate it for a period not exceeding twenty years; the Lindly bill limited this period to three years. It is needless to say that with such restricted security, no street railway certificates could have been sold and hence no railways acquired.

The patience of the people turned to anger. "It is an enabling act that does not enable;" "Instead of 'enabling' act, the bill ought to be called 'disabling' act;" "It absolutely renders impracticable the possibility of floating street railway certificates;" "It's a fraud, a delusion and a snare; it was purposely gotten up to kill municipal ownership;" were some of the comments made. The demand for the enactment of the Mueller bill only became the stronger.

The affair was becoming too large for the little boys at Springfield and Lorimer was sent for, An all night conference was held, at which were present Representatives Lindly, Noble, Shanahan, Morris, Kopf and Chipperfield; Aldermen Bennett, Mavor and Eidmann and Messrs. William Lorimer, Graeme Stewart, Frank O. Lowden, George Wheeler Hinman, Edwy Logan Reeves and Edwin Burrit Smith. A number of amendments to the Lindly bill was suggested, which still left it inadequate; but which the Chicagoans present, except Mr. Smith, were inclined to accept in case nothing better could be had. "This or nothing," said Lorimer. The Chicago delegation met later and replied: "The Mueller bill or nothing."

Meanwhile the question had broadened into one of constitutional privilege. The constitution provides for a roll call on any question before the House upon the demand of five members. At times Speakers had avoided this provision by "failing to see" the members who arose to make the demand and so would rush a measure through by means of the gavel. The custom had been resorted to mainly to meet the dilatory tactics of the minority; it had not been used to obstruct the consideration of legislation on its merits when desired by any considerable number of members.

John H. Miller had been elected Speaker of the House as the "organization" candidate against Lawrence Y. Sherman. His arbitrary use of the gavel in favor of "organization" measures had already become notorious. He had been opportuned to give roll calls, when demanded, on all questions relating to the enabling legislation and to leave no doubt as to the wish of the House, a majority of the members had signed and presented to him a request to that effect. He would make no promises.

On the morning of the 23d of April, the Lindly bill was before the House on the order of the second reading. The situation was tense. Members had refused to vote on any measure until assured their constitutional rights would be observed. The Chicago delegation was present, alert and watchful. The friends of the Mueller bill, if given the chance, expected to strike out the provisions of the Lindly bill and have those of the Mueller bill substituted; the friends of the Lindly bill expected to add to it the six amendments proposed at the all night conference. The first amendment was read and instantly in all parts of the House members were on their feet, demanding a roll

call. Miller was blind and deaf; he neither saw nor heard. In the midst of a din that drowned his voice, he struck the gavel and declared the first amendment passed. The second, third, fourth and fifth amendments followed in similar manner. The noise and confusion increased. Members were pounding the desks before them with bound volumes of pending measures, and Representative Cummings ripped off a board from his desk to secure a more effective instrument. The Speaker's platform had been surrounded by policemen and upon it was seated a number of women. "What are the coppers doing at the Speaker's desk?" "We'll clean 'em out in a minute;" "Get the women out from behind you;" "You coward, hiding behind women;" "Get the ladies off the platform before we begin;" were shouted. Then Representative Burke, followed by Representative Cummings, made a dash for the platform. They were met by the policemen. Other members rushed to the front and joined in a general mixup. Miller declared the sixth amendment passed, gathered up his gavel and papers and fled through a rear door. The most of the "organization" members also withdrew.

The remaining members organized a "rump" House with Charles A. Allen, of Vermillion County as temporary Speaker. Upon roll call, ninety-seven members, a good majority, responded. The Lindley bill was recalled and the amendments which had just been declared passed were reconsidered and voted down. Then the legality of their action was questioned and it was decided best, if possible, to act through the regularly constituted House. From that time, however, they determined that the action of the House should be controlled by the proper legal procedure. Accordingly, a

resolution, introduced by Representative Rinaker, was passed to the effect that until the House records should show a reconsideration of the Lindly bill and the amendments thereto and the adoption of the resolution itself, and until the House should be assured of the continuous observance during the remainder of the session of the constitutional right to a roll call on all questions, no further votes should be cast by the members of the House upon any pending bill. To ensure continued possession, one hundred lunches were ordered and served in the Hall.

At 2:30 Speaker Miller and the "organization" members returned. Mr. Allen stated what had been done and read the resolution which had been adopted. Mr. Miller asked an adjournment until the following day and eventually a recess was arranged for until 5:30. A conference was held at which it was agreed that the Lindly bill and all the amendments thereto should be reconsidered, that roll calls upon proper demand should be granted on all questions arising throughout the session and that no minutes should appear upon the records of the doings of the "rump" House. When the House re-convened, proper steps were taken for a reconsideration of the amendments to the Lindly bill and action thereon was postponed until the following day. Then Speaker Miller read a most remarkable statement.

In the interim since the flight of Miller from the wrath of the House, another conference had been held. At this conference were Lorimer, Hinman, Miller, Yates, Lindly, and Chipperfield. "What to do?" was the question sought to be solved. Defeat was recognized; but some hole for escape must be found. The hole was found; it was a small hole; a rat could

scarcely have gotten through; but evidently it was thought ample for the purpose by its discoverers. Indeed, it may have been a rat hole, for Mr. Miller had surely smelled a rat. The statement read by him had been evolved at this conference. It had been roughly drawn by some one, had been amended by Miller and copied by Yates' stenographer. It read as follows:

"I have been approached at different times by parties who intimated to me that I could make money by allowing a roll call on what is known as the Mueller traction bill or permit its passage. I do not know whether the parties making the statement were authorized to make them or not, but the statements having been made to me, and some of them very recently, fully convinced me that there was something wrong with this effort on the part of outside parties to push this bill. For this reason I denied the roll call, and have stood firm on this proposition up to the very limit. A majority of the House having signified their desire to have a roll call on this proposition, I wash my hands of the entire matter and will permit a roll call to be had."

That is, Mr. Miller had a certain constitutional duty which he had sworn to perform; he had received an intimation from some obscure source that he could make money by performing this duty; therefore, he had resolved to resist with all his power the performance of the duty. "A brave, courageous man," said the admiring Yates.

The charges made by Miller were investigated and found to be wholly without foundation. A puerile attempt to connect by insinuation and innuendo Walter L. Fisher, Edwin Burritt Smith, Mayor Harrison, Benjamin Mitchell and others with the traction interests

and implicate them and the general support of the Mueller bill in corrupt practice was equally futile and received a merited rebuke in the report of the investigating committee. Pending investigation, action on the bill was postponed. The Mueller bill was then practically forced from the Lindly committee. It went the usual course, was amended in the House and passed by a vote of 91 to 20. The Senate concurred in the House amendments and the bill became a law upon receiving the approval of the Governor the 18th of May.

Authorities: Senate and House Journals, 1903, Senate Bill No. 40 and House Bill No. 864; Hurd's Revised Statutes, 1905, p. 438.

XXIX

PROVISIONS OF THE MUELLER LAW

The Mueller law, approved by the Governor May 18, 1903, and in force July 1, 1903, provides that every city in the state shall have the power to own, construct, acquire, purchase and operate street railways within its corporate limits, and to lease the same or any part thereof to any company incorporated under the laws of the state for the purpose of operating street cars for any period not longer than twenty years. Such city is also authorized to incorporate in any grant it may make to any company to construct and operate street railways, the right subsequently to take over all or any part of said railways or to permit a new grantee to do the same.

No city is permitted to operate street railways until the proposition has been submitted to the voters and received the approval of three-fifths of those voting thereon. No ordinance authorizing a lease for longer than five years can go into effect until after the expiration of sixty days from its passage. If, within the sixty days, ten per cent of the voters voting at the preceding election for mayor shall petition for the submission of the ordinance to a popular vote, it must be so submitted and must be approved by a majority of those voting thereon to make it effective.

Street railways owned and operated by any city, or owned by the city and leased to any operating com-

pany are permitted to carry passengers and their ordinary baggage, parcels, packages and the United States mail, and may be utilized for such other purposes as the City Council may deem proper. Such street railways may be operated by any motor power except steam locomotives.

For the purpose of acquiring street railways either by construction or purchase, or for the equipment of the railways, the city is authorized to issue its negotiable bonds for the cost thereof and ten per cent in addition thereto, pledging the faith and credit of the city; but no such bonds may be isued until the proposition to issue them has been submitted to a popular vote and received the approval of two-thirds of those voting thereon.

Or, instead of issuing bonds pledging the faith and credit of the city, the city may issue and dispose of interest bearing certificates, to be known as "street railway certificates," which shall under no circumstances be or become an obligation of the city payable out of any general fund; but shall be payable solely out of a specified portion of the revenues or income of the street railway property for the acquisition of which they were issued. The amount for which such certificates may be issued must not exceed the cost to the city of such property and ten per cent in addition thereto. As security for the payment of the certificates and the interest, the city is authorized to convey by mortgage or trust deed, any or all of the street railway property acquired or to be acquired through the issue thereof and further to grant the right to maintain and operate the street railway property covered by the mortgage for a period not exceeding twenty years to any person or corporation that may

come into possession of the same through any foreclosure proceedings. No foreclosure can take place unless default has been made in the payment of principal or interest and such default has continued for a space of twelve months. The proposition to issue street railway certificates must be submitted to a popular vote and receive the approval of a majority of those voting thereon.

Every city owning, or owning and operating, street railways is required to keep the books of account for such railways distinct from other city accounts and in such manner as to show the true and complete financial results of the city ownership and operation. The accounts must show the actual cost of the street railways owned; the cost of maintenance, extension and improvement; all operating expenses, in case of city operation; the amounts set aside for sinking fund purposes; the value of water or other service, where such service is furnished free of charge and also the value of similar service when rendered by the railway to any other department of the city without charge; also reasonable allowance for interest, depreciation and insurance and estimates of the amount of taxes which would be chargeable against the property if owned by private parties. The accounts must be examined by an expert accountant at least once a year and a report made to the City Council.

If the City Council in any city shall incorporate in any grant to a private company of the right to construct and operate street railways, a provision reserving the right to take over such railways at or before the expiration of the grant, in case the people of the city shall later adopt the act, such provision shall be as valid and effective for all purposes, if the people

later adopt the act, as if it were made a part of such grant after the adoption of the act by the city.

In all cases provided in the act for the submission of questions or propositions to a popular vote, the City Council must first pass an ordinance stating the substance of the proposition to be voted on and designating the election at which it is to be submitted. The election may be any general, city or special election in and for the entire city, coming not sooner than thirty days after the passage of the ordinance. The act itself is not in force in any city until the question of its adoption has been submitted to the electors of the city and been approved by a majority of those voting thereon. The manner and conditions of its submission are the same as those above described.

It is specially provided in the act that no grant or lease shall be made of any street railway property for a period exceeding twenty years from the making of the grant or lease, except that when the right to maintain and operate a street railway for a period not exceeding twenty years is contained in a mortgage or trust deed to secure street railway certificates, and a foreclosure is had, such period shall commence at the date of the foreclosure.

XXX

THE UNION TRACTION RECEIVERSHIP

The City had been criticised for not settling the traction question. When traced to their source, the criticisms appear to have come from persons who had given the matter little thought, or from those favorable to the traction interests. It had been assumed by these critics that the Companies were always eager to settle on terms that would give the City an ideal service and the only reason such service was not immediately installed was because of the obstacles that were being constantly thrown in the way by the City authorities. In truth, the real obstacle to a speedy settlement at all times had been the determined effort of the Companies to obtain unfair advantages through new legislation and to maintain baseless claims founded on that which they had already secured. The City and the Companies had been too far apart on all essential particulars to make a settlement possible. And the City throughout had been backed by the mass of its citizenship.

While the Companies sought to intrench themselves by such legislation as would make a test of the ninety-nine year act unnecessary, they clung to their claims under that act with a tenacity that was almost pathetic. Yerkes was able to instill into the mind of the investing public a substantial faith in the sacred inviolability of those claims and sold the bonds of his companies

EDWIN BURRITT SMITH

whose payment was deferred until long after all other franchise rights had expired. The Companies never had the slightest intention of accepting any franchise that involved a real waiver of the ninety-nine year claims and the city authorities, and what is more important, the people were equally determined not to recognize them. The critics said the patient and long suffering public would some day arise and cast out their dilatory and impracticable servants; in sooth, the people had been patient and long suffering, but their patience had not been wholly one of passive endurance; it had rather been born of their determination, even at the exepnse of suffering, to withstand what seemed unjust and inequitable.

But the time was approaching when this bugaboo of babyland, this straw man of the cornfields, this fetich of the devotees of traction, must be put to the test as to whether it was a real vital thing or not. The question had often arisen: Where would the test be made? In the State or Federal Courts? Both the City and the Companies believed it would ultimately be carried to the United States Supreme Court and the final decision made there. If begun in the Federal Court it would be tried in Chicago and reach the United States Supreme Court directly on appeal; if begun in the State Court it would reach the United States Supreme Court by way of the State Supreme Court. The Companies wished to avoid the State Courts. They believed the Federal Court in Chicago would be more friendly to their contention and they wished to approach the final tribunal with the prestige of a decision in their favor.

In the natural order and by the direct method, the Companies would have continued to operate their lines

until their twenty year franchise had expired and then the City would have instituted some proceedings to determine their right to occupy the streets. In case of litigation, the City would have taken the initiative and necessarily have brought action in the State Courts. The City and the Companies were all residents of the state and the Federal Court had no jurisdiction in an action to test the law brought by one against the other. The Companies, however, devised a plan which must have been doubly pleasing, for it insured a trial in the Federal Court and added zest to their native love for subterfuge. In their dilemma they made use of the jumble of securities of the Union Traction Company to accomplish indirectly what could not have been done directly. A non-resident creditor secured the appointment of receivers for the Union Traction Company and its underlying companies in the United States Circuit Court on the ground that the Companies were insolvent, and the jurisdiction of that court having been thus established over the properties, was extended to include therein all matters germane to the receivership. One of these was the validity and scope of the ninety-nine year act.

The receivers were appointed at the instance of the Guaranty Trust Company of New York. Three suits were brought, one each against the Chicago Union Traction Company, the North Chicago Street Railroad Company and the West Chicago Street Railroad Company. The necessary legal papers by the opposing parties were filed, judgments entered, executions issued and returned unsatisfied. The United States Marshal was unable to find any property belonging to the companies on which to levy. The judgments were respectively for $318,727.22, $565,089.22 and

$240,476.56. On these judgments, creditors' bills were filed against the respective Companies, and again the wheels of justice moved unerringly and swiftly. At the end the court had appointed Rafael R. Govin, James H. Eckels and Marshall E. Sampsell receivers of the defendant Companies. All was done in a day—the 22nd of April, 1903. From the first movement of the waters the current of events flowed smoothly and gently as sweet Afton.

Insolvency is usually considered a disaster, especially to the bankrupt; but in this case it seemed a reason for rejoicing. The *Record-Herald,* in its account of the proceedings, says: "All the traction men in court seemed pleased. Messrs. Govin and Auerbach joked each other and seemed to look upon the matter as a piece of finesse. W. W. Gurley, who is invariably genial, was also in a happy mood. Traction men and lawyers could be heard talking about 'the mantle of Court' being thrown about the Companies; of how much stronger the Companies would be in case the City continued to insist on the abandonment of the ninety-nine year claims and of the impossibility of making away with the Companies' property, were the franchises not extended, because of 'the protecting arm of the United States Court.'"

Later, when the City was brought into the litigation, it charged collusion in the bringing of the suits. The indebtedness on which the proceedings were based was in the form of demand notes, payable to the treasurer of the respective Companies, and dating back to March 20, 1903, shortly after the negotiations for a franchise renewal had ceased. The City claimed that the real creditors were residents of Illinois and that the Guaranty Trust Company was only a trustee

that had taken the notes solely for the purpose and with an agreement with the companies to sue as a non-resident corporation and so bring the cases within the jurisdiction of the Federal Court. For these reasons it claimed the suits should be dismissed. Both the Circuit and the Supreme Courts decided against the City's contention. No doubt the untutored mind of the laymen, unskilled in legal niceties, will imagine it perceives in the facts some slight suspicious traces of a mutual understanding, whether such facts amount to legal collusion or not. However, on the theory that "All's Well That Ends Well," the public will not be inconsolable. There can be no doubt but the receivership proceedings were primarily instituted to forestall action by the City with respect to the ninety-nine year claims and to secure what the Companies believed would be a favorable jurisdiction.

On July 18, about two weeks before the extension franchise expired, ancillary bills were filed in the cases, asking that the City be enjoined from interfering with the Companies in their possession of the streets. The City answered and thus brought before the court the issue as to the validity of the ninety-nine year act.

Authorities: The proceedings in the U. S. Circuit Court in the matter of the Union Traction Receivership are published and bound in fifteen volumes and copies are in the Public and Crerar Libraries. The proceedings referred to in this Chapter are found in Vol. I. The cases are entitled Guaranty Trust Company of New York v. Chicago Union Traction Company: v. North Chicago Street Railroad Company, and v. West Chicago Street Railroad Company.

XXXI

UNION TRACTION COMPANY FINANCES

Under the lease of May 24, 1886, from the North Chicago City Railway Company to the North Chicago Street Railroad Company, the latter Company agreed to pay the interest on all bonds and mortgages of the former and also to pay the former annually, as rentals, a sum of money equal to 30 per cent on its capital stock. Under the lease of October 20, 1887, from the Chicago West Division Railway Company to the West Chicago Street Railroad Company, the latter Company agreed to pay the interest on the bonds and mortgages of the former Company and as rentals a further sum equal to 35 per cent per annum on its capital stock. Under the leases of November 16, 1888, and March 15, 1889, from the Chicago Passenger Railway Company to the West Chicago Street Railroad Company, the latter Company agreed to pay the interest on the bonds of the former Company and as rentals a further sum eqaul to 5 per cent on its capital stock. By agreement of April 1, 1889, the West Chicago Street Railroad Company in effect agreed to pay the interest on the bonds of the West Chicago Street Railroad Tunnel Company. The lessee Companies also agreed to pay the taxes, assessments, water rents and license fees of the lessor Companies.

When on June 1, 1899, the Union Traction Company became the operating Company for the North Chicago Street Railroad Company and the West Chicago Street Railroad Company, it acquired the leases existing between those Companies and their underlying Companies—the North Chicago City Railway Company, the Chicago West Division Railway Company, the Chicago Passenger Railway Company and the West Chicago Street Railroad Tunnel Company. With the acquisition of the properties went certain portions of the capital stock of each of the lessor Companies, as shown by the following table:

Companies—	Total Capital Stock.	Acquired by the Chicago Un. Tract. Co.	Balance Capital Stock Outstanding.
North Chi. St. R. R. Co..	$ 7,920,000	$2,022,600	$ 5,897,400
North Chi. City Ry. Co..	500,000	250,100	249,900
West Chi. St. R. R. Co..	13,189,000	3,216,000	9,973,000
Chi. West Div. Ry. Co..	1,250,000	625,400	624,600
Chi. Passenger Ry. Co..	1,340,300	730,000	610,300
West Chi. St. R. R. Tunnel Co.	1,500,000	1,500,000	.....
Totals	$25,699,300	$8,344,100	$17,355,200

The Union Traction Company was capitalized at $32,000,000, of which $12,000,000 was preferred stock and $20,000,000 common. It will thus appear that the total capitalization resting upon the North and West Side properties, irrespective of bonds and mortgages, amounted to $57,699,300.

The Union Traction Company had no bonded indebtedness, but the underlying Companies were bonded as follows:

	Bonds.	Annual Interest.
N. C. St. R. R. Co., First Mtge. 5%.....	$ 3,171,000	$ 158,550
N. C. St. R. R. Co., Cons. Mtge. 4½%....	1,614,000	72,630
N. C. St. R. R. Co., Power House Mtge. 6%.	15,000	900
	$ 4,800,000	$ 232,080

	Bonds.	Annual Interest.
N. C. C. Ry. Co., First Mtge. 4%.....	$ 500,000	$ 20,000
N. C. C. Ry. Co., Second Mtge. 4½%.....	2,500,000	112,500
	$ 3,000,000	$ 132,500
W. C. St. R. R. Co., First Mtge. 5%.....	$ 3,828,000	$ 191,400
W. C. St. R. R. Co., Cons. Mtge., 5%.....	6,172,000	308,600
W. C. St. R. R. Co., Ctf. of Ind., 6%.....	497,000	29,820
W. C. St. R. R. Co., Power House Mtge. 5%.	184,000	9,200
	$10,681,000	$ 539,020
C. Pass. Ry. Co., First Mtge. 6%.....	$ 400,000	$ 24,000
C. Pass. Ry. Co., Cons. Mtge. 5%.....	1,306,000	65,300
	$ 1,706,000	$ 89,300
C. W. Div. Ry. Co., First Mtge. 4½%....	$ 4,016,000	$ 180,720
W. C. St. R. R. Tunnel Co., First Mtge. 5%.	1,500,000	75,000
Totals	$25,703,000	$1,248,620

In addition to the above, there was a floating indebtedness as follows:

	Floating Indebt.
N. C. St. R. R. Co.....	$2,316,000
W. C. St. R. R. Co.....	1,090,000
Total	$3,406,000

Hence, the total liabilities in capital stock, bonds and floating indebtedness against the Union Traction properties were:

Capital stock	$57,699,300
Bonds	25,703,000
Floating indebtedness	3,406,000
Total	$86,808,300

Under this swollen condition of its liabilities the annual fixed charges of the Company were necessarily large. Of course it did not have to pay dividends on its own capital stock, nor did it have to pay such portions of the rentals required by the leases as were represented by the capital stock of the lessor Companies which it had acquired and held as its own assets. As a part of its fixed charges, however, it did

have to pay on the capital tock which it had not acquired. In addition to these sums and the interest on the bonds of the lessor Companies it was also obligated to pay certain compensation charges and license fees to the City:

On the capital stock of the lessor Companies which the Union Traction Company had not acquired it was obligated to pay rentals as follows:

N. Chi. St. R. R. Co. ($5,897,400), 12%	$ 707,688
N. Chi. City Ry. Co. ($249,900), 30%	74,970
W. Chi. St. R. R. Co. ($9,973,000), 6%	598,380
Chi. West. Div. Ry. Co. ($624,600), 35%	218,610
Chi. Pass. Ry. Co. ($610,300), 5%	30,515
Total	$1,630,163

The annual fixed charges of the Company were:

The annual fixed charges of the company were:	
Amounts paid as rentals on capital stock of lessor companies	$1,630,163
Interest on bonds of lessor companies	1,248,620
Annual compensation to city for right to use overhead wires (ord. April 3, 1894)	25,000
Annual compensation to city for right to lay tracks on certain streets (ord. Feb. 4, 1893)	5,000
Annual compensation to city for use of certain bridges	3,000
Annual compensation to Chi. City Ry. Co. for right to use certain of its tracks in South Division of city	750
Annual license of fifty dollars per car to city averaging about	36,000
Total fixed charges	$2,948,633

The above does not take into account the interest on the floating indebtedness of the North Chicago Street Railroad Company, amounting to $2,316,000, and of the West Chicago Street Railroad Company of $1,090,000. These sums the Company had agreed to pay and until paid the interest thereon would be an annual fixed charge which, if reckoned at six per cent per annum, would increase the above amount by $204,360. Nor does the above include operating expenses; taxes, general and special; special assessments; street sprinkling and water charges; paving;

repairs; reconstruction; work on bridges, viaducts and approaches; charges for inspection of construction paid to the City; charges for work done by the City on bridges and other public work chargeable under the ordinances to the Company; bills of the City for sweeping and cleaning streets, and insurance and amounts paid out on account of accidents.

In the petition of the receivers for instructions filed in the receivership proceedings it is set forth that the Union Traction Company entered into its obligations under the representation that the properties would pay all charges and expenses, twelve per cent on the entire capital stock of the North Chicago road and six per cent on the entire capital stock of the West Chicago road, and leave an amount of at least $500,000 net as its own income. It was further charged that for the three fiscal years ending July 1, 1897, 1898 and 1899, the North Chicago Company had declared and paid dividends of twelve per cent each year upon the entire outstanding stock, when in fact it had earned not to exceed eight and three-fourths per cent, and that the West Chicago road had for the same years declared and paid dividends of six per cent each year when it had actually earned not to exceed three and eighty-five one-hundredths per cent.

Nevertheless, it is alleged, the Company during the first fifteen months of its operation of the railways was able to discharge all its obligations under the leases; but thereafter, owing to a variety of causes, such as increased taxation, the competition of the Northwestern Elevated Company, a necessary increase in the wages of employes, the giving of unlimited transfers and the increased cost of materials, its in-

come had been insufficient and the rental values to the North and West Chicago Railroad Companies had not been fully discharged. Although the revenues of the Company were increasing, it was believed the income for the succeeding year would still be insufficient.

Since the Company could not meet its current obligations its alternative was either to sacrifice securities which it had deposited with a trustee as a guarantee or to borrow money with the hope of being able to repay it out of the increased earnings of the future. It was probably impossible to borrow. The "physical value" of the properties in 1902, according to Arnold, was $14,937,088.43. Standing against them there was already a bonded and floating indebtedness of $29,-109,000. To supply this deficiency in value investors would have to look to the franchises. These were just about to expire. Only a few of the less important ones would survive July 30, 1903. The determined opposition of the City to the ninety-nine year claims excluded that source of security. The investing public had at last become impressed and did not wish to put more money into the Yerkes tangle.

If the Union Traction Company were out of the way the North Chicago Street Railroad Company and the West Chicago Street Railroad Company could probably have operated their respective properties and discharged their current obligations as long as they were allowed to occupy the streets. Their debts, to be sure, were largely in excess of their "physical" assets and there was no greater hope in the franchise values than in the case of the Union Traction Company. All these matters could have been left for subsequent adjustment after the ninety-nine year claims had been disposed of. In view of the fact that the

primal object of a receivership is to liquidate the estate of the insolvent debtor, it may seem at first thought that the Court would have done only righteous judgment by selling out the confessed bankrupt Companies. Such a course, however, would have been full of embarrassments and difficulties, affecting most seriously the public interests. No doubt the Court pursued the wiser course in preserving the situation intact for a final adjustment of all matters. With such weak justification the receivership, with its attendant evils, must be regarded as the climax of severe and protracted ills which the people suffered too patiently.

Authorities: For facts in this Chapter see Petition of Receivers for Instructions, Guaranty Trust Co. v. Companies, Vol. I, Doc. 9.

XXXII

THE CITY AND THE NINETY-NINE YEAR ACT

Dating from the passage of the ninety-nine year act, the City, through its administrative and legislative officers, the City press and the people, as indicated by public addresses and in the proceedings of various clubs and organizations, maintained a consistent opposition to any recognition of its virtue or validity. Its enactment was vigorously opposed as a piece of vicious legislation. It was also opposed on legal grounds which were argued before the Governor and recognized by him in his veto message. After its enactment the legal objections remained and the subsequent attitude of the City and the people made it plain that these objections would be urged with full force and vigor when the proper time arrived. This attitude of the public should be clearly understood in view of the claim sometimes made that the demand for a surrender of the alleged rights under the act was in effect an attempt to confiscate the property of the Companies and was unfair to investors.

It is specially to be noted that none of the ordinances prior to the enactment of the ninety-nine year act, except the first ordinances, which fixed the period of occupancy at twenty-five years, contained an express provision as to time limit. All were content to refer back to the first ordinances for their terms and

conditions. Subsequent to the act the ordinances almost invariably fix the time limit in express terms and some expressly state that nothing in the ordinance shall be construed as a recognition of the act. The warning to beware could not be more clear or positive.

The extension ordinance of July 30, 1883, contained further evidence of the purpose of the City. Although Corporation Counsel Adams had expressed an opinion favorable to the validity of the law, the ordinance expressly left the matter open for subsequent adjustment. With respect thereto Mayor Harrison, Sr., said in a message submitted to the Council:

"Day by day the Dartmouth College decision is becoming less and less sacred. Perhaps in twenty years from now the courts may be so free that the City may be able to get a hearing, which today would be denied it. With these views I was anxious to stave off the determination of the question of the validity of the act of 1865. This present ordinance leaves the whole matter in abeyance for twenty years. * * * Before twenty years shall have elapsed the City's charter may be so amended as to empower it to purchase and run the roads, or purchase and sell to others on favorable terms."

During the years of agitation preceding the expiration of the extension ordinance, the hostility to the act and the determination to resist it in the courts were shown on every possible occasion. The Harlan Report of 1898 declared "that the ninety-nine year claim is virtually a negligible quantity and could be effectually contested by the City in the courts if the issue should be taken there." The platform of the Municipal Voters' League, representing a dominant

element of the public, reiterated year after year that no franchise should be given for more than twenty years and practically ignored the act as a matter for consideration. The majority of the aldermen was elected on this platform. This was the position taken generally by the people and the press in all discussions of the subject.

In his speech accepting the renomination for Mayor in 1899, Mayor Harrison took a more affirmative and emphatic position. "Then," said he, "another clause that should be inserted in any grant to a street railway company is that the acceptance of the grant shall act as a direct waiver of all rights the street railway may have under the ninety-nine year act." In his annual message to the Council, April 8, 1901, he asserted that one of the essential conditions of a satisfactory settlement of the traction question was: "A distinct waiver of all claims under the ninety-nine year act." This statement was repeated and amplified in a special message to the Council on the traction situation January 6, 1902, and again in his annual message of 1903. The demand for a waiver also appeared in the platform of the Municipal Voters' League for every year beginning with the year 1901, and it was this demand for a waiver that finally put a stop to the negotiations between the Companies and the Committee on Local Transportation.

The feeling with respect to the ninety-nine year act cannot be better expressed than by quoting Mayor Harrison's message to the Council of May 25, 1903:

"The Local Transportation Committee of the City Council of 1902-1903 in its deliberation on the franchise extension question with the representatives of the principal street railroad companies stood out firmly

and determinedly for a strict compliance with the popular demand for a waiver of the alleged rights under the ninety-nine year act, and because of this firm and unwavering demand the deliberations came to a sudden end. The expression of the popular will in this respect is clearer and more emphatic today, if such a thing be possible, even than when the subject was then under discussion. Any action in thwarting the popular will or ignoring the popular demand in this regard would subject the guilty official to certain and deserved popular condemnation.

"The unwillingness of the public to permit this ninety-nine year act longer to vex and trouble it is based upon the further reason that the methods employed to pass it through the General Assembly and finally over the veto of the then Governor of Illinois, Hon. Richard J. Oglesby, were notoriously venal and corrupt. The press of the day openly charged the use of corruption funds in its passage. The act was asserted to have been 'conceived in sin and brought forth in iniquity' and because of its inherent viciousness and the shamelessness of the methods employed in its passage the bill was denounced in unmeasured terms from one end of the state to the other.

"The memory of the people in questions of this kind is long and tenacious; their desire for revenge, retribution and justice may be slow, but they are none the less certain. Thirty-eight years may have passed since the ninety-nine year bill was enacted into law; the people have neither forgotten the methods employed in its passage nor have they become reconciled to the infamous burden it placed upon them."

And yet the dealings in traction securities went merrily on. Financial tricksters continued to exploit

the properties, to overlap stocks with bonds and bonds with stocks, to build company upon company and to chink the crevices with the good money of gullible investors. And these latter continued to empty their pockets with the blind faith of those who cast their bread upon the waters, or possibly with an assured faith in the God of Mammon to accomplish all things. The financial interests back of the Companies could not believe the people were really in earnest, or, if they were, would remain so for any length of time, or, even so, that their dubious hopes would not in some manner be realized. For the weakling who is unable to fly the impending storm there is wholesome sympathy; for him who is warned and still does not fly, there is less sympathy; but for the man in his right mind who knowingly buys a doubtful title there is small sympathy if his title proves bad. Every investor in traction securities had the means of knowing the instability of his title so far as it rested on the ninety-nine year act and invited to his own door whatever might come in the form of disaster.

XXXIII

JUDGE GROSSCUP'S DECISION

The City was fortunate in its choice of attorneys to represent it in the litigation. Edgar B. Tolman, Corporation Counsel, was a lawyer of marked ability. Associated with him as special traction counsel were Edwin Burritt Smith and John C. Mathis. Mr. Smith had been closely identified with the people's side of the controversy, was a thoroughly and carefully trained lawyer and was gifted with a clear logical mind. Mr. Mathis was a specialist in Municipal law and was peculiarly well fitted to render important service. The City's presentation of the case was also greatly strengthened by the appearance as counsel of David T. Watson. The traction interests were represented by W. W. Gurley, Henry Crawford, John S. Miller, Joseph S. Auerbach and Brainard Tolles, lawyers of preëminent ability.

Only a brief statement of the points involved can be made here. It was claimed by the City that the clause in the original ordinance, which limited the period of occupancy of the streets to twenty-five years and which gave the City the right to purchase the railways at the end of that period, constituted one part of the contract, of which time was an essential element; that the ninety-nine year act, as claimed by the Com-

panies, sought to extend this period from twenty-five to ninety-nine years to the obvious disadvantage of the City; that this extension of the period impaired the obligation of the contract between the City and the Companies, and the act, therefore, was contrary to that clause of the Constitution which forbade such legislation. This Constitutional objection had been raised before Governor Oglesby and been recognized by him as having force; it had been relied on in large measure by the City, although Corporation Counsel Adams in his opinion had expressed himself against it. The City also contended that the act incorporating the Companies, of which the ninety-nine year act was an amendment, violated that clause of the Constitution of 1848 which provided that no private or local law should be passed which embraced more than one subject and that subject should be expressed in the title. On these points Judge Grosscup decided adversely to the City. The arguments therefor, he says, "do not warrant space for statement, much less for discussion." The law was constitutional and valid; only its scope and effect remained to be determined.

The acts of February 14, 1859, of February 21, 1861, and of February 6, 1865, from which the Companies derived their charters, prohibited the use by the Companies of any motive power other than animal power. Nevertheless, the City had by ordinance permitted the Companies to install cable and electric power. On the supposition that the ninety-nine year act was valid, the City claimed that the Council was without authority to pass these ordinances, contrary to the charters of the Companies, and that the Companies had no

power to acept or act under them; or if the Council had the authority to grant the privilege, then the authority of the Companies to make use of it was limited to the period specified in the ordinances. Under the former contention the Companies would be restricted to the use of animal power on all of their lines; under the latter, on nearly all the lines, and on the remaining lines the right to use cable or electric power would expire with the ordinances containing the grants. Without the right to use cable or electric power, the plants of the Companies would be of little value. The ninety-nine year act authorized the Council, with the written consent of the Companies, to modify, amend or annul any of the contracts, stipulations or licenses which had been entered into, and under this provision of the act Judge Grosscup decided that the Council had the authority to grant and the Companies to accept the right to use cable and electric power, and this right having been exercised, had become fixed for a period of time defined by the ninety-nine year act and not by the specific ordinances. Subject to the conditions of the act, the Companies might oprate the railways "as now constructed" during its full period.

Next to the validity of the law itself probably the most important question to be considered was as to what streets the act was applicable. This question had never arisen in any formal way that would define opposing views. The assumption had been that only those streets which had been designated for occupancy by the ordinances passed prior to the act were affected. This was the position taken by Corporation Counsel Adams in his opinion to the City in 1883. Ex-President Benjamin Harrison, in an opinion to the Com-

panies, made a threefold division of the ordinances. It will be remembered that the charter acts left to the City the naming of the particular streets which the Companies might occupy. According to Mr. Harrison's opinion the right to occupy those streets that had then been named prior to the ninety-nine year act was unquestionably extended for the full period of ninety-nine years; the right to those streets that were named subsequent to the act and prior to the incorporation of the City under the city and village act in 1875, was also in his belief extended for the period, although there was debatable ground to the contrary; the right to those streets that were named subsequent to the incorporation of the City under the city and village act was clothed in doubt, which could be resolved only by a court decision.

In Mr. Harrison's brain seems to have been born the germ which later in the imagination of the traction lawyers expanded into the thriving and beautiful growth known as the "branch and twig" theory. "The Charter," says Mr. Harrison, "manifestly contemplated a street railway system, and the future extension of these lines, to meet the expanded limits and increasing needs of a city and suburban population." "Every ordinance of the City after 1865," say the traction lawyers, "in respect to the occupation, use or exclusion of railways in and upon the streets of the City, was inherently and necessarily an amendment of what had gone before, because such ordinances in every case derived all their force, value and significance from the relation which they bore to the whole body of rights and duties which made up the charter of the Company. *They were natural and intelligible steps in the development of an expanding railway*

system." Thus it was that the legislators of 1865, who, it seems, had been most unjustly regarded as gentlemen of thrift not averse to turning a penny on their own accounts, were clothed with prophetic mantle and raised to mountain heights, from whose elevation they were able to discern the marvelous growth and expanding needs for railway service of the future city; and knowing full well the beneficent purposes of the corporations and beholding as in a vision the hopeless incapacity of their unborn children, were moved with tender solicitude and pious trust to commit the estates of their coming offspring to the care and custody of these benevolent creatures, who would surely do all things well. Under the "branch and twig" theory the City, after the act of 1865, was wholly without power to fix the time limit of any grant it might make, that having been predetermined by the act. As soon as a street had been named by the Council upon which the Companies might construct a railway or make an extension, the time limit of the ninety-nine year act attached itself as by automatic arrangement.

The City contended that the Legislature had given the Council large powers of control over the City streets; that the second section of the ninety-nine year act, like the acts of 1859 and 1861 which it amended, expressly recognized and confirmed the right of the City to determine in what streets and upon what terms and conditions it would authorize street railways; that the City by these various acts acquired the right to enter into contracts with the Companies as to the terms and conditions under which the latter might occupy the streets, and that among these terms and conditions was the duration of such occupancy; that

the phrase "during the life hereof," occurring in the section, was vague and uncertain in its meaning, but in its most reasonable interpretation referred to the time during which all prior acts, deeds, contracts and licenses should be valid and effectual, as if each were set forth in full in the acts of 1859 and 1861 so amended; that the interpretation given the phrase by the Companies which eliminated from all the acts and ordinances, prior and subsequent, the time limits expressed therein and made all grants subject to the fixed period of ninety-nine years, was forced and violent; that a grant of such valuable and exclusive public privilege could not be conferred in doubtful and ambiguous words, but must be expressed in clear and positive language; that the Court, under well established principles of law, must resolve all doubts in favor of the City and give the act an interpretation, if such could fairly be made, which would preserve the franchises to the City against the claims of private corporations.

The decision of Judge Grosscup, while not formally adopting the "branch and twig" theory, practically followed the line of Mr. Harrison's opinion. It was decided that originally the power to grant the use of the streets for street railway purposes vested solely with the Legislature; that the acts of February 14, 1859, and February 21, 1861, which incorporated the Companies and authorized them to construct and operate railways within certain prescribed territory upon streets which the City might thereafter designate, were contracts between the State and the Companies, in which the City had no part; that the City in designating streets for occupancy by the railways and generally in passing ordinances relating thereto were act-

ing with delegated authority and as the agent of the State; that the Legislature, having chartered the Companies and fixed a period during which they might occupy the streets, had the power, with the consent of the Companies, to extend the period; that the act of February 6, 1865, did so extend that period to ninety-nine years and applied not only to grants made prior to the act, but also to those made subsequently "during the life hereof;" that whenever any grant was made by the Council to any streets the time limitations of the ninety-nine year act took effect as if made of the date of the act; that the time limitations expressed in the ordinances were without effect, since the City had no authority with respect thereto; that this was true so long as the policy of the State with respect to the streets of municipalities remained unchanged; that the adoption of the Constitution of 1870, which forbade the making of grants by the Legislature of the streets of any municipality for street railway purposes without the consent of the local authorities, and the passage of the city and village act, which provided for the incorporation of municipalities in accordance with the new Constitution, and which gave to the municipalities incorporated thereunder the power to grant the use of the streets for street railway purposes for a period of twenty years, was a change in the policy of the State, which gave to such municipalities power in the granting of street railway franchises; that the incorporation of Chicago in 1875, under the city and village act placed it within the workings of the changed policy of the State; that thereafter the City acted with original and not delegated power and that all grants and ordinances for the use of the streets were contracts direct

between the City and the Companies and were subject to the time limitations expressed therein. In brief, the right of the Companies to maintain and operate their lines on all streets which had been designated by ordinances prior to the incorporation of the City in 1875 under the city and village act, was established for the full period of ninety-nine years from February 14, 1859; on streets designated thereafter the time limitations expressed in the respective ordinances controlled.

The City voted on the proposition to incorporate under the city and village act on the 23rd of April, 1875, but the result of the vote was not officially declared until May 3, 1875. Judge Grosscup decided that the incorporation took effect on the latter date. The grant to Wells street was made on the 26th of April and so came within the operation of the ninety-nine year act.

As to the annexed territory the Court decided according to the circumstances under which the respective ordinances were passed. The Village of Jefferson had been incorporated under the city and village act before any grants were made in that territory. The Trustees of the Village made two grants—one for eighty-one years, the other for twenty years. Under the city and village act the Trustees had no authority to give a franchise for more than twenty years and the Court decided that both grants were limited to twenty years from passage.

In the unincorporated Town of Lake View the supervisor had given his consent to the North Chicage Railway Company to occupy certain streets as provided in the act of February 14, 1859, and those streets were held to come within the operation of the

act. The Town of Lake View was incorporated by special charter February 16, 1865, and existed under such charter until it was incorporated under the city and village act, April 16, 1887. In the meantime the Board of Trustees passed a number of ordinances consenting to the laying down of tracks by the North Chicago City Railway Company. The Court decided that these ordinances were without legal authority, inasmuch as the Trustees had no power under their charter to make street railway grants.

After the incorporation of the City of Lake View under the city and village act the Company continued to operate the lines and the authorities acquiesced therein. The Court decided that such acquiescence was equivalent to an express grant of twenty years from the date of incorporation, April 16, 1887. On July 15, 1889, the City of Lake View was annexed to the City of Chicago and the latter city acquiesced in the use of the railways and according to the decision thereby ratified the ordinances and recognized the railways as legally existing for the period of twenty years from April 16, 1887.

It was contended by the City that the ninety-nine year act did not apply to the North Chicago City Railway Company, inasmuch as the act purported to amend only sections one and two of the acts of 1859 and 1861, while the incorporation of the North Chicago Company was effected by section ten of the act of 1859. On this point Judge Grosscup decided adversely to the City.

A number of other points were raised and decided touching the right to use particular streets, but it does not seem desirable to present the details here. The opinion, in which Judge Jenkins concurred, was given

from the bench May 28, 1904, and the final decrees entered April 15, 1905. Both the City and the Companies appealed to the Supreme Court of the United States.

Authorities: Opinion of Judge Grosscup, Guaranty Trust Co. v. Companies, Vol. X, Doc. 180; Harrison's Opinion, same, Vol. IV, Doc. 105, quotation p. 44; quotation from brief of traction attorneys, same, Vol. VI, Doc. 164, p. 46; final decrees, same, Vol. XIV, Doc. 313, and Vol. XV, Doc. 321; Reported, Govin v. City of Chicago, 132 Fed. Rep. 848.

XXXIV

THE TENTATIVE ORDINANCE

After the appointment of the receivers for the Union Traction Company, the Committee on Transportation continued negotiations with the Chicago City Railway Company. On the 24th of August, 1904, it reported to the Council an ordinance to that Company thereafter known as The Tentative Ordinance.

This ordinance ran for twenty years. It recognized the validity of the ninety-nine year claims and commuted them and all other outstanding grants to the single period of thirteen years. At the expiration of the period and at the end of each year thereafter during the life of the grant, the City might purchase for itself, or any licensee named by it, all the "property, real and personal," then comprising the going street railway system of the Company within the City and reasonably acquired for its operation at its then cash value (exclusive of earning power and any franchise value), for continued use in the City for street railway purposes," the purchase price to be determined by appraisement. During the thirteen-year period the Company was to pay the City as compensation five per cent on its gross earnings and ten per cent during the remaining seven years. Other provisions of the ordinance were: (1) The immediate reconstruction of the lines of the Company, with re-

quirement for first-class service. (2) The continuous control by the City of the service. (3) Provision for universal transfers from the Company to other Companies from any natural division of the City to the other division. (4) Provision for joint use of tracks by the Company and other Companies operating in the district bounded by Twelfth street, Halsted street and Chicago avenue. (5) The right to require the Company to use subways when built. (6) The right to require the Company to rearrange its tracks, loops and terminals. (7) The right by the City to require extension of three miles of double track per annum. (8) Through routes on Halsted and other streets, with right to require re-routing of cars. (9) Underground trolley construction in the business district north of Eighteenth street.

The Company never gave its assent to the ordinance.

XXXV

DECISION OF THE SUPREME COURT

While the traction case was in preparation for the United States Supreme Court, Mr. Mathis died and Mr. Smith became too ill to continue the work. Clarence S. Darrow and Glenn E. Plumb, who were appointed special counsel on traction for the City in their stead; James Hamilton Lewis, Corporation Counsel, and Edgar B. Tolman represented the City in the Supreme Court. W. W. Gurley, Henry Crawford, John S. Miller, Joseph S. Auerbach, Brainerd Tolles, John P. Wilson, John J. Herrick and Frederic D. McKenney represented the Companies.

The case was decided by the Supreme Court March 12, 1906. On points involving the constitutionality of the law and the jurisdiction of the Federal Court, the decision was in favor of the Companies; on all points touching the merits of the case and which were vital to the situation, it was in favor of the City. Justice Day wrote the opinion, which was concurred in by Chief Justice Fuller and Justices Harlan, Peckham and Holmes. Justices McKenna, Brown and Brewer dissented, the dissenting opinion being written by Justice McKenna.

In his opinion, Justice Day traced the history of the legislation leading up to the enactment of the ninety-nine year act. While it was conceded that the

right to grant street railway franchises vested in the State, it was shown by the various acts that the Legislature had given the City of Chicago a large measure of control over its streets and clothed it with peculiar and unusual authority with reference thereto. The City charter of 1851 gave the Council exclusive control over the streets. In the exercise of this charter privilege, the Council passed the ordinance of August 16, 1858, and thereafter in the act of February 14, 1859, the Legislature gave effect to the right of municipal control thus exercised by confirming the terms fixed by contract in the ordinance. In support thereof the opinion quotes approvingly from Justice Magruder's opinion in the transfer cases, 199 Ill., 484-525:

"There was no other action of the Common Council taken before the passage of the act of February 14, 1859, except the ordinance of August 16, 1858. By the use of the words, 'with such rights and privileges as the said Common Council has prescribed,' the Legislature could not have referred to any other action of the Common Council than the passage of the ordinance of August 16, 1858. It thereby recognized the power of the Common Council to pass that ordinance and the appellant has introduced it and relies upon it. The Legislature, by thereby affirming and recognizing the passage of the ordinance of August 16, 1858, also recognized the power of the Common Council to pass that ordinance under clause 9 of Section 4 of Chapter 4 of the Charter of 1851."

In furtherance of this policy of the State to give the City large control over its streets, the Legislature in 1863 amended the City Charter so as to empower

the Council to regulate the use of horse railways and the laying of tracks.

The act of February 14, 1859, was in full accord with this policy of the State. In speaking of the act, the opinion says:

"The corporation was authorized to construct, maintain and operate a single or double track railway in the City of Chicago within the present or future limits of the South or West Divisions of the City. But the grant did not stop there. It was immediately qualified and limited by the authority given to the Common Council of the City, for it provided that this right to maintain and operate street railways was upon streets, etc., 'as the Common Council of said City have authorized said corporation, or any of them, or shall authorize said corporation so to do, in such manner and upon such terms and conditions, and with such rights and privileges as the Common Council has or may, by contract with said parties, or any or either of them, prescribe.' * * *

"A more comprehensive plan of securing the City in the control of the use of the streets for railway purposes could hardly be devised. The Company must be 'authorized' by the Common Council before it can lay tracks and operate railways in the streets. This is more than to designate that for which authority already has been given. To authorize is to 'clothe with authority.' 'To give legal power to' is an additional grant of right and power which the Legislature requires the corporation to obtain as a condition precedent to its use and occupation of the streets. This power of the City * * * necessarily includes the right *to fix the time for which the streets may be used.*"

The opinion then analyzes the acts and ordinances and the contracts between the Chicago City Railway Company and the Chicago West Division Railway Company and shows that up to the passage of the act of 1865, the right and authority of the City to fix the term during which the Companies might occupy the streets was fully recognized and enforced.

What, then, was the effect of the act of 1865? Did it revolutionize the former policy of the State and take from the City the right to control the use of the streets and to fix the term of occupancy by the Companies? If so, such change of policy must be clearly expressed and not left to conjecture. The first section of the act amended section one of the acts of 1859 and 1861 so as to extend the lives of the corporations from twenty-five to ninety-nine years. This was done in clear and unmistakable language. The first portion of the second section of the act was substantially a repetition of portions of the original acts, which authorized the construction and maintenance of street railways in the City of Chicago upon such streets as the Council had previously authorized or should from time to time authorize the Companies to occupy, the rights, privileges and immunities and exemptions to be such as the Common Council had prescribed or might prescribe by contract with the Companies or either of them.

Thus far no disposition was shown to depart from the policy of the State as indicated by the act of 1859, and subsequently followed. The words which were supposed to work a revolution of former policies and extend former franchises and rights to the full term of ninety-nine years and to withhold from the City the power of granting any further use of the

streets to the railway Companies, except upon terms of extending the right for a like period, were contained in the last clause of the second section:

"And any and all acts or deeds of transfers of rights, privileges or franchises, between the corporations in said several acts named, or any two of them, and all contracts, stipulations, licenses and undertakings made, entered into or given, and as made or amended by and between the said Common Council and any one or more of the said corporations, respecting the location, use or exclusion of railways in or upon the streets, or any of them, of said City, shall be deemed and held and continued in force during the life hereof, as valid and effectual, to all intents and purposes, as if made a part and the same are hereby made a part of said several acts."

This clause, says the opinion, deals, first, with the transfers of rights, privileges or franchises between the corporations, as from the Chicago City Railway Company to the Chicago West Division Railway Company; and, second, with the contracts made between the City and the Companies. As to these, the act declares they "shall be deemed and held and continued in force during the life hereof, as valid and effectual, to all intents and purposes, as if made a part, and the same are hereby made a part of the several acts."

In commenting on this, Justice Day says:

"What does this mean? It cannot operate to extend the contract rights and privileges obtained directly from the City before or after the transfer by one Company to the other ninety-nine years, for as to these the act distinctly declares that the contracts, stipulations, licenses and undertakings between the Council and the Companies shall stand 'as made or

amended.' This declaration is in the past tense, and can have no reference by any fair construction to future engagements."

"The contracts by this clause in all their terms, including time limits, are written into the original acts of 1859 and 1861, as if made a part thereof. Much discussion has been had as to the proper interpretation of the ambiguous expression 'during the life hereof.' For the Companies it is insisted that its meaning is to extend all franchises and contracts, and whether the latter have been or may hereafter be made to the end of the ninety-nine years, so as to give the railways the franchises to use the streets for that period, by an irrevocable grant, irrespective of any limitations by State or municipal action subsequently undertaken.

"To give the act the construction insisted on by the Companies is inconsistent with the policy of the State, declared in the act of 1859, which ratified the ordinance of 1858, and gave additional rights in the streets only upon obtaining the consent of the City. It practically reads out of the act the preceding clause of the very section under consideration, which expressly recognizes the authority of the City Council to control the use of the streets by contracts which it has made or may make in the future.

"To say that contracts, the terms and conditions of which are left to agreement with the City, could only be made upon terms of extension to ninety-nine years, is to nullify in an important particular the power conferred in the act. The construction contended for requires us to ignore or entirely change the sense of terms establishing the contracts as made, and requires an interpretation which applies to the future what is

specifically stated to be meant for the past. It does violence to the rule contended for by counsel for the Companies, that words are to be considered in their ordinary signification, and every part of the statute, if practicable, given meaning in harmony with its provision upon the subject.

"The purpose of the act of 1865 was to continue as made the former contracts with their amendments. If it was intended to extend all past contracts and licenses for the use of the streets to the term of ninety-nine years, and to require the City Council to enter into no new engagements for terms and conditions which should not extend to that period, it would have been easy to give expression to such purpose in plain words and not resort to language which, as stated in one of the briefs of the learned counsel for the Companies, is 'unusual and more or less figurative.'"

A more reasonable interpretation of the phrase, "during the life hereof," and one more consistent with the legislative purpose expressed in the act, says the opinion, is the following:

"The first part of this act has prolonged the corporate life to ninety-nine years. In the sense which we have already defined the franchise granted by the State *as conferring the right to use and occupy the streets by permission from the City,* the act may consistently be held to extend and validate the deeds of transfer as conveying a continued right to such franchise for the extended period of the lives of the corporations."

"This construction is in harmony with the policy of the State, as evidenced in its prior legislation on the subject and in the earlier part of the section under consideration; it gives some meaning to all parts of

the act and makes its provisions consistent with each other. It preserves local control of streets for railway purposes, which the Legislature in all of the acts under consideration has sought to protect.

"Considering the act as a whole, it has the effect to extend the life of the corporations to ninety-nine years and to authorize the use of the streets of Chicago, with the consent and upon terms agreed upon with the Council, and this right may be acquired in like manner during the extended life of the corporations for such period as may be contracted for. Contracts already made are affirmed as made. The transfers between the companies are validated."

While this interpretation does not wholly satisfy the Court, it is believed by it to be more in harmony with the intent of the Legislature than that offered by the Companies. The Court then invokes the well-established principle of law "which requires such grants to be made in plain terms in order to convey private rights in respect to public property." "So enormous a grant of privileges, including an exclusion from some streets of any railway system, ought not to be presumed or held to be conferred in doubtful and ambiguous words." "The effect of the act of 1865 was to affirm the contracts as made between the Council and the Companies; these contracts must stand as concluded, unless changed by subsequent agreement between the parties." To determine when the right of occupancy of the Companies to any street expired, resort must be had to the ordinance containing the grant.

It was further held that the act of 1865 applied to the North side company as well as to the South and West side companies.

The purchase clause contained in any ordinance preserved the right of occupancy of the streets named therein until purchase by the City. The right did not extend to the entire system, but only to those streets specifically named. The ordinance of August 16, 1858, affirmed by the act of 1859, and the early ordinance to the Chicago City Railway Company by reference to the act, contained the purchase clause and hence give to the Companies the continuing right of occupancy in the streets so named until such purchase is effected. The ordinance of May 23, 1859, and nearly all subsequent ordinances to the North Chicago City Railway Company did not contain the purchase clause and hence the rights of occupancy in the streets of that company have for the most part expired.

The grants made by the Village of Jefferson, incorporated under the City and Village act, were in force for the period of twenty years from passage. This period had already expired. In Lake View, the assents given by the supervisor were without time limit and were held to be limited to the life of the grant to the main road or twenty-five years. Such of the grants by the Board of Trustees of the Town of Lake View and those by the City of Lake View as were without time limit were held to have expired when the territory was annexed to the City of Chicago. The Board of Trustees of Lake View was held to have authority to make grants and the grants made by it as well as those by the City of Lake View which contained time limitations were valid for the period named in the ordinances.

The effect of the decision was to give the City practical control of the situation. There remained to the Companies some of the lines on the South and West

sides, subject to the purchase clause, and there were a few grants of recent date to which the time limit fixed in the ordinances had not expired. These were but parts of a broken system and could not be operated to advantage.

Authorities: Reported, Blair, Receiver, v. City of Chicago, 201 U. S. 400.

XXXVI

MUNICIPAL OWNERSHIP

The purchase clause in the early ordinances indicate that the people of that early day may have realized the closeness with which the new form of service would touch their municipal life and that they believed, uncertainly, perhaps, the time might come when, as a matter vital to their interests, the City should assume the management of the railways as one of its governmental functions. The postponement of this right of purchase, which, it was believed, the ninety-nine year act sought to effect, was the objection most strongly urged against the passage of the act. The people did not wish to be despoiled of a privilege of such immense consequence.

At the best, however, the idea of municipal ownership was vague and the time for its realization necessarily postponed for twenty-five years by the terms of the ordinances. The extension ordinance of 1883 worked a further postponement of twenty years. The City was without legal right to own and operate the railways, and no occasion arose to centralize public sentiment and direct it to that end. In 1876 the labor organizations of the city sent a committee to the City Council to protest against the further granting of street railway franchises to private Companies and the Trades and Labor Assembly was a consistent supporter of the idea up to 1896, when it was merged

into the Chicago Federation of Labor. In later years the latter body has been foremost in its advocacy. Among the membership of labor organizations the theory was much in vogue and throughout the City were many who held to it more or less firmly. However, there was no general movement in its favor and its advocates were generally regarded as theorists and visionaries.

No doubt there was an unconscious development of the idea in the larger movement toward the assumption by the City of broader governmental powers. Especially was this true in more recent years. The City owned its water works. It was developing an electric light plant. It was seeking to eliminate minor governmental bodies within its territory that it might displace their functions with its own. The governing power of the City was being extended and was taking firmer grasp upon those things which touched most closely the life and interest of the people, and in respect to which it was compelled to act as their agent and sponsor. The public mind was thus prepared the more readily to accept the extension of the City's power to the acquisition of the street railways whenever developments rendered such acquisition desirable.

The inadequate service given by the Companies and their repeated efforts to perpetuate their privileges created the occasion. The people began to look about for some form of relief. Municipal ownership seemed the only alternative. In many European cities it had become practical. Its adherents in Chicago began a propaganda to disseminate the facts and spread the doctrine. In less than a decade, the overwhelming sentiment of the people had accepted the idea as an

orthodox element of faith and favored its reduction to practice, either absolutely or conditional upon the behavior of the Companies.

The distinct turning of the public mind in this direction is discernible as far back as 1897 in the discussion over the Humphrey bills. While the strength of that agitation was directed toward the defeat of the bills, frequent references in speeches and in the press show an increasing prevalence of the idea. During the succeeding years, the subject entered more fully into the aldermanic and mayoralty campaigns, and while, perhaps, the speeches of candidates and editorial discussion under such conditions should not be taken too seriously, they show, at least, an increasing interest in the subject and furnish a fair index of its growing recognition.

In a paper read before the Woman's Club, October 25, 1898, Mayor Harrison added marked impetus to the movement. The following is an extract:

"It is enough to say that the principle of municipal ownership and control is neither chimerical nor what is often used in a disparaging sense, socialistic; that a municipality can operate a traction system with a fair and just civil service as well and profitably as it today operates the water office or as the general government operates the postal service; and that pending a final and satisfactory solution of the question as to the best method of exercising municipal control, all corporations or individuals seeking grants of profitable public franchises must be compelled to make the municipality a fair and equal partner in the venture, that the citizens may receive their due from the accruing profits."

In a message to the Council, dated May 25, 1903,

the Mayor quoted the above extract from his former speech and added:

"These were my personal views in 1898, before the question of public ownership had been seriously discussed by a considerable number of our citizens. My experience in official life, as well as the investigations I have since made, have only served to strengthen the impressions then formed that the idea of public ownership is neither a fad nor a dream, that it is based on the soundest of common sense, the most stable of business reasons, that it will not only help to lessen the burden of taxation weighing upon our citizens, reduce the rates they must pay for the necessaries of life now furnished by private Companies at as high a cost as they dare exact, but go far toward removing corruption in public affairs by removing the cause and incentive for the debauchery of public officials."

The Council also gave the idea official recognition in the resolution of December 18, 1899, which provided for the appointment of the Street Railway Commission, and required from it a report as to the expediency and desirability of municipal ownership. Both the Commission and later on, December 11, 1901, the Committee on Local Transportation recommended that under existing conditions, the immediate municipalization of the railways was not practicable; but that the City should proceed to acquire the legal rights and leave the question of future municipalization open for the wisdom of the future to decide. With the enactment of the Mueller law in 1903 and its adoption by the voters of Chicago in April, 1904, the question passed from the realm of mere agitation of a theory into a legislative fact and thereafter stood as an acquired right of the city.

The first public expression on the question was in April, 1902. In 1901, the Legislature had enacted the Public Policy law, whereby upon petition the people might vote upon questions of public policy. The result of the vote had no binding effect but was to be considered as an expression of public sentiment for the guidance of the authorities. The proposition submitted to the voters at the April election was as follows:

"For the ownership by the City of Chicago of the Street Railways within the corporate limits of said City."

The vote was as follows: For, 142,826; against, 27,998.

In April, 1904, the people voted under the provision of the Mueller law on the following:

"For the proposed adoption of an act commonly known as the Mueller Law."

The vote was: For, 153,223; against, 30,279.

After the expiration on July 30, 1903, of the franchise rights of the Companies under the extension ordinance, the Chicago City Railway Company continued to occupy the streets by virtue of temporary operating licenses granted by the City Council. The Union Traction Company, being under the jurisdiction of the Court, of course, needed no permit. At the election in 1904 the people voted also under the Public Policy Law upon the following questions:

"Shall the City Council, upon the adoption of the Mueller Law, proceed without delay to acquire ownership of the street railways under the powers conferred by the Mueller Law?"

"Shall the City Council, instead of granting any franchises, proceed at once under the City's police

power and other existing laws to license street railway Companies until municipal ownership can be secured, and compel them to give satisfactory service?"

Upon the first question the vote stood: For, 121,957; against, 50,807. Upon the second question it was: For, 120,863; against, 48,200.

The total vote cast at the April election of 1902 was 215,857; at the April election of 1904, 236,810. Thus it appears that the propositions for municipal ownership were carried by large majorities not only of the votes cast upon the propositions themselves, but of the entire votes cast at the respective elections. These majorities were given, notwithstanding the fact that the City had not at that time acquired the right of municipal ownership.

The situation was unique. The ninety-nine year claims of the Companies were still pending in Court. The adoption of the Mueller law at the election just passed made that law effective in Chicago and gave the City the right to proceed under its provisions; its validity, however, had not been tested and before the City could acquire and operate the railways another popular vote must be had to authorize the issuance of street railway certificates necessary for their purchase. Although the people had voted in favor of municipal ownership, they had also voted to return aldermen who had publicly advocated the granting of franchises. In the meantime the service was very bad and getting worse. As a practical solution of the situation a majority of the aldermen probably favored a franchise which should compromise the differences between the City and the Companies and provide the way for ultimate municipal ownership. Such a plan seemed to meet the favor of Mayor Harrison.

Under such conditions the tentative ordinance, heretofore described, was framed and reported to the Council by the Local Transportation Committee.

Then came the Mayoralty campaign of 1905. An open letter to the people of Chicago by Judge Tuley practically made Edward F. Dunne the nominee of the Democratic party on a no-franchise Immediate Municipal Ownership platform. The demand was made that the City Council terminate at once all negotiations for the renewal of franchises; that instead the City Government proceed to negotiate with the Companies for the purchase of their tangible property and unexpired lawful franchises; that in case of a failure to reach an agreement within a reasonable time the City proceed without delay to acquire the ownership of the properties by condemnation proceedings or to establish new lines in place of those in operation; that after the acquisition of the lines the City proceed to acquire the right of municipal operation as provided in the Mueller law. Opposed to Dunne, the Republicans nominated John M. Harlan on a platform favoring a settlement along the lines of the tentative ordinance. As the result of a heated campaign in which traction was the principal issue, Dunne was elected by a vote of 163,189 to 138,671 for Harlan.

At the same election the following questions of public policy were also submitted:

"Shall the City Council pass the ordinance reported by the Local Transportation Committee to the City Council the 24th day of August, 1904, granting a franchise to the Chicago City Railway Company?"

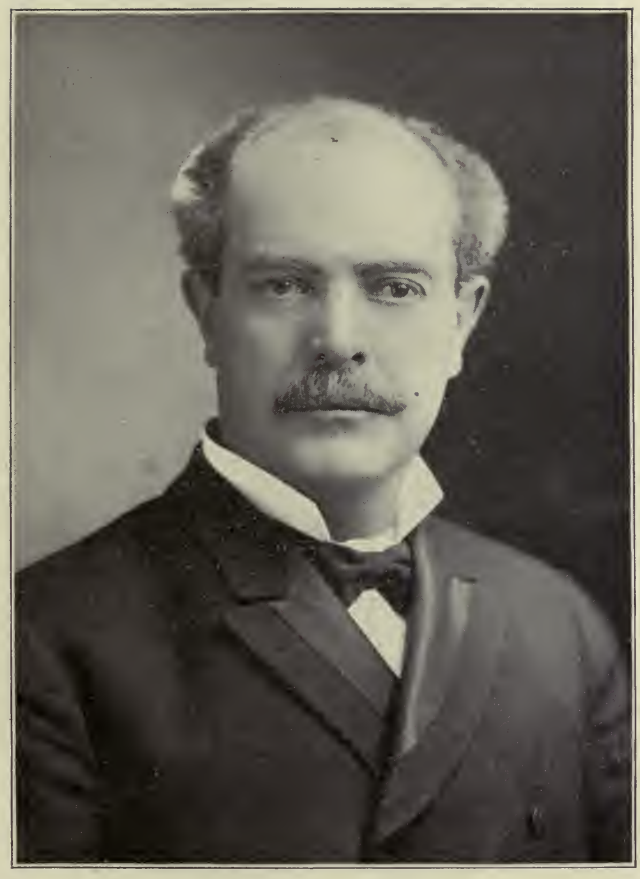
"Shall the City Council pass any ordinance grant-

ing a franchise to the Chicago City Railway Company?"

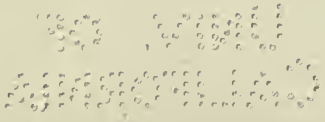
"Shall the City Council pass any ordinance granting a franchise to any street railroad company?"

On the first proposition the vote stood: For, 64,391; against, 150,785. On the second: For, 60,020; against, 151,974. On the third: For, 59,013; against, 151,135. The total vote cast at the election was 264,483. The people had again voted by a large majority for municipal ownership and had elected a Mayor pledged to secure it at the earliest moment possible.

The situation was practically unchanged from the year before except for the added emphasis given to the demand for immediate municipal ownership and the presence of a Mayor personally and politically devoted to the cause. Mayor Dunne sought with singleness of purpose and inspiring zeal to press forward the work for which he had been elected, but was met with almost insuperable difficulties. Hitherto, the questions which had arisen had been such as to bring the entire people together in united action. The subject of municipal ownership had been incidental to every actual contest with the Companies in which the people had engaged except the one involving the enactment and adoption of the Mueller law, and in this the purposes for which different advocates of the measure wished its adoption varied greatly. Some wished it for its own sake as a means of acquiring the railways; others saw in it an instrument with which to force better terms from the Companies. With the former the time had now come to realize the promise contained in the measure; with the latter it seemed the wiser course to compromise with the Companies, avoid further litigation even at a sacrifice



EDWARD F. DUNNE



and postpone municipal ownership until the City was better equipped to undertake it. There was a necessary alignment of these parties on opposite sides of the question of immediate municipal ownership.

The methods of the opposition, however, are not free from criticism. Probably no Mayor of Chicago ever entered upon the responsibilities of his office with a higher sense of duty and a more earnest purpose to perform it than did Mayor Dunne. His mandate from the people was clear and certain and he set his hand to his task with resolution and sincerity. It is all the more to be regretted that his efforts were not met with fairness and consideration. If the opposition had been rational, the people might have been convinced of their supposed error and repented; on the contrary, ridicule and abuse were the favorite weapons of warfare and were used to a wearying and disgusting limit. There were those who could not approach any subject bearing the Dunne impress with any sort of temperate suggestion. Strike disturbances, excessive crimes and, it may be, irregularities of the weather were all chargeable to Dunne. Many "good" men, who had been quiescent for years, suddenly awoke from a Rip Van Winkle sleep and were displeased to learn that Dunne had not closed the Sunday saloons. A sort of Dunnephobia raged with wild fury and united all causes to discredit the Mayor's traction policy.

Nevertheless, the Mayor persisted and won. On July 5, 1905, he submitted to the Council two plans for procuring municipal ownership. One, known as the "contract" plan, provided for a body of trustees who should construct a municipal street railway system in behalf of the City and hold and operate it un-

til the City had gone through the necessary procedure to acquire and operate it for itself. The other plan proposed an ordinance for the right to issue street railway certificates and for municipal operation. These plans were referred to the Committee on Local Transportation. On November 13 the Mayor submitted the drafts of two ordinances in pursuance of the latter plan and these were also referred to the committee.

The committee did not consider the Mayor's plan and ordinances. Instead it reopened negotiations with the Companies for another ordinance. The "tentative" ordinance was dead. It had been rejected by the Railway Company and was despised by the people. The committee should have known the futility of framing another. It should either have concurred with the Mayor, or if unconvinced of the wisdom of his plans, left the making of franchise ordinances alone until the Court had decided the ninety-nine year claims. The attitude of the people and of the Companies as to these claims was well known. With the claims alive and undecided, any ordinance which would be acceptable to one would not be to the other.

Nevertheless, the committee framed another twenty-year franchise ordinance and reported it to the Council December 4, 1905. It met with decided opposition. Walter L. Fisher, John M. Harlan and others offered a list of twenty-six amendments which the Companies refused to accept. A minority of the committee reported the Mayor's ordinances, one to authorize the issuance of $75,000,000 of street railway certificates for the acquisition of the railways and the other for municipal operation. By a surprising change of front of some of the aldermen who had formerly opposed the Mayor, the ordinances were car-

ried and under the provisions of the Mueller law were placed on the ballot at the April election of 1906.

Under the public policy law, a third proposition as to whether the City Council should proceed without delay to secure municipal ownership and operation of the street railways instead of granting any franchise ordinances to private Companies was also placed upon the ballot. On the proposition to issue the street railway certificates the vote stood: For, 110,225; against, 106,859. This proposition required only a majority vote and so was carried. On the proposition for municipal operation the vote was: For, 121,916; against, 110,323. This proposition required a three-fifths vote and so failed to carry. On the third proposition the vote was: For, 111,955; against, 108,087.

XXXVII

THE PENDING ORDINANCES, 1907

The Mayor's course was the wise one and was justified by the events that followed. Shortly after the Mueller law ordinances passed the City Council and before the people had voted on them the United States Supreme Court decided the traction case and disposed of the ninety-nine year claims of the Companies. If the franchise makers had won, the City would have been bound by an ordinance which in its making recognized those claims as valid and proposed a doubtful method for their disposal. Moreover, the authority to issue street railway certificates for the purchase of the railways was the initial step toward securing the best bargain with the Companies and no negotiations should have been undertaken until that authority had been acquired. If the ninety-nine year claims had been declared valid, the City needed not only the right to condemn but also the means of purchase. If the claims were held invalid, the City should still have the means of purchase at hand, inasmuch as many of the lines were held by the Companies subject to the purchase clause. In either case, the City, with the means of purchase in hand, would have an added advantage in any negotiations with the Companies. If the City were to proceed to municipal ownership the street railway certificates were of course an actual necessity.

These were purely business considerations. At the stage of development which the subject had then reached, the moral considerations seem to have gained ascendency and left no place for "dilly-dally diplomacy" over the ninety-nine year claims. While the first demand for a waiver of those claims seemed to admit a consideration therefor, the growing disposition of the people had been to obtain an absolute waiver or to await the final decision of the Court. A high resolve had taken possession of the public mind not to yield to the aggressions of the Companies or to recognize their doubtful privileges, unless compelled to do so by an adverse decision. Those who stood for negotiations with the Companies when negotiations were useless signally failed to appreciate the scope and vitality of the forces which were dominating the situation.

Following the election which authorized the issue of the street railway certificates, Mayor Dunne, April 27, 1906, addressed the "Werno Letter" to Alderman Charles Werno, Chairman of the Committee on Local Transportation. After reciting the fact that the people had voted on several occasions in favor of municipal ownership and had authorized the issuance of the necessary special certificates under the Mueller law and that the decision of the Supreme Court in the traction litigation had cleared the way for such ownership, he states that the thing immediately to be desired is "the prompt and thorough improvement of the street railway service." "In this connection," however, "the controlling consideration must be that nothing shall be done which shall impair the right of the City to acquire the street railway system as soon as it

has established its financial ability to do so." To this end he suggested:

"The first practical step to be taken, then, appears to me to be to request the existing Companies at once to indicate to your committee whether or not they are able and willing to enter into an agreement to sell to the City all their tangible property and unexpired rights at a price to be now fixed, and to undertake the improvement of their service immediately, * * * the City to have the right to take over this property at any time, upon reasonable notice. If they will join, if possible as one Company, in the reconstruction of their entire system upon plans to be adopted by the City, with their concurrence, which shall provide for unified service, through routes, universal transfers and operation under revocable license, then they should be adequately assured of the payment of the value of their present property (to be now fixed before rehabilitation) and additional investment when the City does take over the lines, and they should receive a fair return upon this present and future investment and some share of the remaining net profits while they continue to operate. Subject to these provisions, the profits of operation should go to the City as a sinking fund for the purchase of the property. * * * The time has come for action; and if the present Companies are either unable or unwilling to act within the lines indicated in the immediate future, the City should and must definitely turn to other sources for relief from conditions which are no longer to be endured."

The committee opened negotiations with the Companies along the lines suggested in the "Werno Letter." Walter L. Fisher was chosen special traction

counsel and conducted the negotiations on behalf of the committee. The Chicago Railways Company was organized to acquire the Union Traction properties and represented those properties in the negotiations. The Companies submitted estimates of the values of their tangible properties and their unexpired franchise rights. Bion J. Arnold, Professor Mortimer E. Cooley of the University of Michigan, and A. B. Dupont, experts, appraised the values for the City. The following were the results:

	Companies' Estimate.	City's Estimate.
Chicago City Railway Company	$30,436,264	$22,369,068
Chicago Union Traction Company	43,119,512	28,625,714
Totals	$73,555,776	$50,994,782

The values finally agreed upon and incorporated in the ordinances were $21,000,000 for the property of the City Railway Company, and $29,000,000 for that of the Union Traction Company. The negotiations extended over a period of about eight months and resulted in the recommendation of two ordinances, one for the Chicago City Railway Company and the other for the Chicago Railways Company. The committee held open sessions and free opportunity was given outsiders to be heard. D. K. Tone, representing the Chicago Federation of Labor; Margaret Haley, Raymond Robins, George E. Hooker and others appeared before the committee and presented objections.

The question of a referendum arose. It had become settled as a matter of public policy that no settlement of the traction question should be made without the approving vote of the people. On this proposition the press had been practically united; it had been one of the planks of the Municipal Voters'

League, and both Dunne and Harlan in the preceding mayoralty campaign had pledged themselves to it. The Council had unanimously adopted a resolution in its favor. When an agreement between the Companies and the Committee seemed probable there occurred a change of front that really seems remarkable. A demand was made for the immediate passage of the ordinances without waiting for a referendum. In this demand the entire press, with the exception of the American and Examiner, and seemingly a considerable portion of the people joined. A resolution for a referendum introduced in the Council by the Mayor was voted down by a large majority. Either the ordinances met with a large measure of approval or some people had become very tired. Committees of the Chicago Federation of Labor, the Referendum League and the Municipal Ownership League, who certainly did not represent the body of their constituents, complicated the situation by announcing a referendum petition containing three propositions: First, as to whether the City Council should proceed by condemnation under the Mueller law to "acquire and equip a complete modern, unified street railway system, with one fare and universal transfers for the entire City, instead of passing the pending franchise ordinance"; second, as to whether all ordinances granting franchises to public service corporations should be submitted to the people and by them approved before final adoption by the City Council; and, third, as to whether the Legislature should repeal the Sunday closing laws. The petition was headed with a statement of Judge Tuley's to the effect that the City could obtain clear title to the street railways only by condemnation.

The offering of this petition was a weak attempt on the part of its sponsors to combine a possible interest in a public cause with sly political wisdom. Its heading was deceptive inasmuch as the statement of Judge Tuley was made with reference to a situation wholly different from the existing one; it did not provide directly for a referendum upon the pending ordinances as had been contemplated in the general line of public policy on that question; it insinuated that the ordinances did not provide for "a complete, modern, unified street railway system, with one fare and universal transfers for the entire City," as they clearly aimed to do; it contained the irrelevant saloon proposition, with the evident intent to attract a wholly alien support; and throughout lacked the impress of candor, honesty and directness which should be the mark of every great public cause. The real friends of municipal ownership and the referendum prayed deliverance from their injudicious brethren.

Two resolutions for a referendum were introduced in the committee. One by Alderman Foreman provided that the Committee recommend the adoption by the Council of the ordinances unless a lawful petition for a referendum at the April election be filed with the Election Commissioners on or before the last day on which such petition could be legally filed. In the event of the filing of the petition, the ordinances should be amended to the effect that they should not become effective unless a majority of the votes cast upon the question at the election should be in favor of their adoption. Thus amended, the ordinances should be put upon passage at once. The other resolution was introduced by Mayor Dunne and provided that in the event of the filing of the petition, the ordinances

should not be called up for passage until after the election. The Foreman resolution prevailed in the committee and also in the Council. By order of the Council, 100,000 copies of a petition providing for a referendum upon the adoption or rejection of the ordinances were printed and distributed through the Mayor, the aldermen and the heads of the departments. The Council proposition was substituted for the second question on the Referendum Committee's petition and both petitions were circulated. The ordinances were reported to the Council January 15, 1907, and were passed, subject to the approval of the people, February 4 at an all night session. In the meantime, a suit instituted to test the validity of the Mueller law and the certificates authorized thereunder was decided in favor of the City by Judge Windes and is now pending in the State Supreme Court.

The ordinances provide for the immediate rehabilitation of the street railway systems and for the right of the City or its licensee to purchase the same, on the first day of February and on the first day of August of any year upon giving six months notice. The rehabilitation and re-equipment must begin at once and must comply with specifications agreed upon and must be carried on under the supervision of a Board of Engineers. The work must be completed in three years. In case of purchase by the City for municipal operation, the City agrees to pay the companies the $50,000,000 agreed upon as the present value of the properties and in addition thereto the cost of rehabilitation and of extensions plus five per cent for brokerage and ten per cent construction profits.

If purchased for operation by a private corporation for its own profit, the purchase price is to be increased

twenty per cent, but if the beneficial interest of the purchasing corporation be limited to the actual moneys invested in the properties plus five per cent in addition thereto and five per cent per annum on the entire amount thus obtained, the entire net profits to go to the City, then payment of the additional twenty per cent shall not be required.

The Board of Engineers is to consist of three persons, one selected by the City, one by the Companies and a third by agreement between the City and the Companies. Mr. Bion J. Arnold has been agreed upon as the third engineer and will supervise the entire work of rehabilitation.

The Companies are limited to five per cent per annum on the agreed value of the properties plus the cost of rehabilitation and extensions. Of the gross receipts, six per cent must be set aside for maintenance and repairs and eight per cent for renewals and depreciation. Such portions of these two funds as are not actually devoted to the specified purposes remain in the funds and upon purchase of the properties go to the city or licensee. If the funds are insufficient for the specified purposes, the companies must supply the deficiencies. The net profits are to be divided between the city and the companies in the ratio of fifty-five per cent to the city and forty-five per cent to the companies.

The ordinances further provide for a comprehensive system of transfers and through routes, by means of which passengers can ride over all connecting lines, within the City limits, covered by the City Railway Company, the Union Traction Company, the Chicago Consolidated system and the Chicago General Railway system for a single fare of five cents, in any one

general direction. Twenty-one through routes are provided for and others may be added as required by the traffic. No transfers are to be given in the business district of the South side North of Twelfth street, except within the subways when they are completed and in operation.

After the third year, the Chicago Railways Company must construct and equip each year the equivalent of twelve miles of single track for the Union Traction System and the Chicago City Railway Company, the equivalent of eight miles of single track. Additional extensions may be required by the City Council.

Upon demand of the City and at the City's option, the Companies agree to furnish funds to the amount of $5,000,000 for the construction of a central subway, to be built and owned by the City upon plans approved by the Board of Engineers. The Companies also agree to furnish funds for the construction of extensions to the subway. During the life of the grant, the subway cannot be used for street railway purposes by any other Company, except that the City may authorize or require any other Company operating elevated railways to use them to the extent of their surplus capacity, a reasonable rental being paid therefor.

The Chicago Railways Company agrees to lower and reconstruct the Washington, La Salle and Van Buren street tunnels.

The motive power is to be electricity on all lines. After three years the City may require the installation of underground conduits.

Within three years the Chicago City Railway Company must have in operation at least eight hundred double truck cars, of modern type and design, ap-

proved by the Board of Engineers, and the Chicago Railways Company must have in operation at least twelve hundred such cars. The City may require additional cars and equipment as needed. After one year cars cannot be operated in trains, but must be operated singly. All cars must be equipped with electric bells, fenders, head-lights and two sets of brakes, shall be kept clean, well lighted and ventilated, heated at not less than fifty degrees Fahrenheit and bear conspicuous signs to designate route and destination.

The Companies are required to use grooved rails, clean and sprinkle the streets and pave their right of way. The City makes a complete reservation of its police powers.

The books and accounts of the Companies must be kept according to forms approved by the City Comptroller and are subject at all times to the inspection of the City's accountants. The books must be audited annually by public accountants and the companies must make sworn annual reports to the City.

The Chicago Railways Company undertakes to acquire within one hundred and twenty days from the passage of the ordinance all the property and rights of the Union Traction Company and its constituent Companies, provided a clear title, free from all liens and incumbrances, can be secured at a price not exceeding what the City would be required to pay under the same circumstances. In case of failure to secure a clear title, the Company has sixty days more to promulgate a plan of reorganization which shall fully recognize all the interests involved and receive the approval of Judge Grosscup or Judge Seaman. Each holder of any right or claim against the property must have an opportunity to participate in the reorganiza-

tion. This opportunity is to remain open until January 20, 1908, by which time the Company must proceed to perfect its title to the property and the City may, in its discretion, use its powers to that end, the Company to reimburse it for any expenditures incurred in so doing. Within three years from the passage of the ordinance the company must perfect its title and remove all liens and incumbrances from the property except those authorized by the ordinance. The Company is required to deposit in trust more than a majority of the stock of the North Chicago Street Railroad Company, the West Chicago Street Railroad Company, the North Chicago City Railway Company, the Chicago West Division Railway Company and the Chicago Union Traction Company. In case of the failure of the Company to comply with the ordinance, these stocks pass to the City. The Company is to have no right to accept the ordinance, unless, at the time of acceptance, it shall have lawful possession of all the lines and equipment of the Union Traction system.

Mayor Dunne did not approve of the ordinances. Following their introduction in the Council, he issued a public address in which he announced his candidacy for a renomination and stated his objections to the ordinances. Subsequently he obtained an opinion from Benjamin H. Magruder, formerly Justice of the Supreme Court, and Mr. Clarence N. Goodwin, favorable to his objections.

It is urged against the ordinances that no limit is placed upon the cost of rehabilitation; that under estimates made by Arnold such cost would not be less than $40,000,000, which added to the $50,000,000 agreed upon as the present value of the property exceeds the $75,000,000 of Mueller certificates which the

City is now authorized to issue. Mayor Dunne would have the ordinance contain a clause limiting the cost of improvements so that the entire amount to be paid for the properties should not exceed the amount of certificates authorized by law to be issued. This would compel the Council to pass an ordinance and the people to vote affirmatively for an increased issue of certificates in order to complete the needed improvements.

Mayor Dunne also urged that the Companies should guarantee that the fifty-five per cent of the net profit which the City is to get as its share should not fall below a certain per cent of the gross receipts; that if any licensee company would agree to operate the lines at a four cent fare or less, it should not be compelled to pay the twenty per cent bonus for the properties as provided in the ordinance; that the ten per cent allowed for contractors' profits should not apply to subcontractors and that the ordinance to the Chicago City Railway Company should provide for an interchange of transfers with the Calumet Electric Railway Company and the South Chicago City Railway Company whenever the City is in a position to compel such interchange from those companies. In this last respect, the ordinance was amended before passage.

In addition to the above, ex-Justice Magruder and Mr. Goodwin point out the difficulties in acquiring title to the Union Traction properties by the Chicago Railways Company and the possible failure of its ordinance on that account. In such event it is said the operation of the North and West side lines by the Chicago City Railway Company would be made difficult by the fact that the latter's charter does not give it a right to operate on the North side and the unification of the service would be involved and incomplete. It

is also said that the right of the City to deal freely and fully with the subway question is curtailed, especially in that it limits the City's power to provide for the operation of elevated railways in the subways; that the duration of the grant is not affirmatively stated in the ordinance and that the agreement between the City and the Companies as to the purchase price prevents the City from acquiring the lines by condemnation under Eminent Domain. A number of other objections seemingly of less import are also urged.

These objections were for the most part raised before the Committee on Local Transportation and were thoroughly discussed there. They have since been definitely answered by Mr. Fisher, special traction counsel. Some are conceded as having force, others are declared trivial. Each voter must determine for himself to what extent the objections are valid and whether they outweigh the promise for good service contained in the ordinances.

SUPPLEMENT

SHALL THE PENDING ORDINANCES BE ADOPTED

The elimination of all disputed points brought the City and the Companies into well defined relations. The Companies had been stripped of their dubious claims and such as remained to them were recognized by the City as having legal and moral force. The question at once arose: Could the City with credit to itself and without imperiling the advantages it had gained make a settlement with the Companies? To this question the "Werno Letter" was the answer. The Mayor and the Committee thought it could. After eight months of negotiations, the question now arises: Do the pending ordinances present a satisfactory settlement of the traction problems now before the City or do they contain elements of such danger as to demand their rejection? If the proposed settlement impairs any substantial right of the City acquired or defended through years of struggle, then assuredly the ordinances should not pass.

At the outset, it is well to note that the people entertain a suspicion as to the sincerity and good faith of the intentions of the Companies in whatever they promise or undertake. Judging from their past behavior the suspicion is natural and well merited. It may well be asked, therefore, to what extent this suspicion shall influence the consideration of the ordi-

nances. With some it is doubtless sufficiently strong to exclude any settlement whatever. In entering upon the negotiations, the Mayor and the Committee either left all such doubts behind or made them the cause for greater care in framing measures of protection. If it be conceded that the negotiations were proper, it follows, now that the terms of settlement have been agreed upon, that the doubts can no longer be effective except to compel a closer scrutiny of the ordinances to determine whether valuable rights have been impaired in their making, and whether the City has been amply protected in case the Companies do not proceed in good faith to carry them out. In this connection, it may be said that the man who might be most disposed to do evil is happily out of the reckoning; and, also, it may well be considered whether the Companies, having tested the temper of the people and tasted the dregs of sad experience, may not be constrained to conduct themselves hereafter in a manner becoming to those of chastened and humbled spirit. Especially so, if the penalties for alternative conduct are sufficiently drastic.

The mere fact that objections have been raised to the ordinances does not in itself furnish sufficient cause for rejecting them. No agreement covering a new situation was ever drawn that did not contain the possibility of a lawsuit. In a situation so complicated as the one involved in the ordinances, it would certainly be surprising if none could be found. A lawyer, employed to give a legal opinion concerning any agreement, would clearly fail of his duty if he did not point out the latent possibility of evil; and yet in operation the agreement might work out excellently well. So, Justice Magruder, in the objections raised by him,

goes no further than to give his opinion as a lawyer; the voter must decide for himself whether the objections are vital and fundamental and whether the ordinances would make good working agreements.

The presumption must be in favor of the ordinances. In so far as they conform to the spirit and letter of the platform on which Mayor Dunne was elected and of the "Werno Letter" they represent the policy of the majority of the voters as expressed at the polls. The Democratic platform of 1905 expressly demanded "that the City government proceed at once to negotiate with the street railroad companies for the purchase of their tangible property and their unexpired lawful franchises in the streets for a fair, liberal and full price." Only in the event of a failure to agree upon the purchase were condemnation proceedings to be begun. This was before the Supreme Court had disposed of the ninety-nine year claims or the people had voted to authorize the issue of the Mueller certificates. Following these events the "Werno Letter" opened the way for the negotiations demanded in the platform and the ordinances are the result. Unless these ordinances are at variance with the purpose with which the negotiations were instituted, they are binding upon the Mayor and the City so far as it is possible for an announced public policy to have binding force.

The first thing to be considered in the negotiations was the price of the properties. According to the platform this price was to be "fair, liberal and full." The estimates of the Companies fixed the price at about $74,000,000; those of the City experts at about $51,000,000. Of this about $5,000,000 was for paving done by the Companies, concerning the allow-

ance of which there was some question. The price agreed upon was $50,000,000. It is said this price is too high and that a jury in a condemnation suit would so find. Only a wayfaring man will attempt to predict what a jury may do and it is difficult to conceive how the City could produce at a trial evidence of less value than the estimates of its own experts. Nor is it safe to assume that a jury would accept the City's estimates and wholly disregard those of the Companies. It is also claimed that no allowance should be made for the former cable lines. At the date of the "Werno Letter" and of the beginning of the negotiations, the cable lines were in operation and the terms of the letter stated that the agreement should be as to "the present value of the property, to be now fixed." If condemnation suit were brought, the valuation would be fixed as of the date of the beginning of the suit; not a year or more later when it was finally decided in the Supreme Court. Of course under present conditions the longer suit or settlement is postponed the less will be the value of the properties, since depreciation will continue, and it is conceivable the time might come when nothing would have to be paid. In the fixing of the price of the properties, there seems to have been no departure from the announced public policy.

The requirement of the "Werno Letter" for a unified service is met with the provision for twenty-one through routes and others as needed, with universal transfers, so that a passenger may ride over all connecting lines of the Companies for a single fare in any one general direction; the requirement for a revocable license is met with a provision for purchase at the end of six months' period by the City, by a licensee of the

WALTER L. FISHER

City for its own profit by paying twenty per cent bonus or by a licensee for the City's profit without the bonus; the requirement for a division of the net profits is met with the provision for a division in the ratio of fifty-five per cent for the City and forty-five per cent for the Companies. In none of these respects do the ordinances violate the principles of settlement as set forth in the "letter." The general requirement that "nothing shall be done to impair the right of the City to acquire the street railway system as soon as it has established its financial ability to do so" seems to be fully met. It is claimed, to be sure, by Justice Magruder, but denied by Mr. Fisher, that the agreement between the City and the Companies deprives the City of its right to condemn. Even if this be true, the point seems to be of little value, since the very purpose of the "Werno Letter" and the making of the agreement is to do away with the necessity for condemnation.

The difficulties in securing title to the Union Traction properties, and, in case of failure thereof, of operating its railway lines by the Chicago City Railway Company and the Chicago City Railroad Company are such as are inherent in the situation and were fully known and realized when the "Werno Letter" was written. It was understood at that time that some method would have to be devised by which these difficulties might be overcome. The method provided in the ordinances seems likely to succeed and no objection thus far has been presented to the method itself. If it does not succeed, the City will have lost nothing; the work of rehabilitation and re-equipment of the lines will have taken place and in the end the City will have acquired the majority control of the

stock of the Companies with which to perfect the title.

Nor does it not seem wise to restrict the cost of rehabilitation and equipment to the amount of authorized street railway certificates as suggested by the Mayor. The development of the service in accordance with the City's needs should not be made contingent upon a possible future happening; the City might not authorize another issue of the certificates. It is urged that an amendment to the above effect would induce the Council and the voters to provide for the issue. As a rule it has not been considered good public policy to seek to bind future legislative bodies and electorates upon questions of a political nature. However desirable the acquisition of the railways by the City may be, future Councils and future voters should be left free as far as possible to pursue or change any given line of policy as they deem best.

A provision in the ordinances that any licensee Company that would agree to operate the lines at a four cent fare or less should not be required to pay the twenty per cent bonus would no doubt be desirable. The Companies, it is said, refuse to make this concession or, indeed, any concession except to a licensee that would operate the lines distinctly for the public benefit. The matter does not seem sufficiently vital to warrant the rejection of the ordinances. It is doubtful whether the City will care to change its operating companies until it is able to do so either under the contract plan provided in the ordinances or by direct city ownership and operation. The practical exclusion of other operating companies will have a distinct tendency to hasten the adoption of these more favorable provisions of the ordinances.

It is urged by Mayor Dunne that the Companies

should guarantee that the City's share of the net receipts should not fall below a certain fixed per cent of the gross receipts. It has been claimed that net receipts are a matter of book-keeping and that the Companies could so manipulate their books as to make these a vanishing quantity. The possibilities of book-keeping were all known when the "Werno Letter" was written and the only suggestion made therein to any basis of division is upon the net receipts. The ordinances amply protect the City. The rehabilitation and re-equipment of the lines and the building of extensions are under the complete supervision of the City through the Board of Engineers; the purchase of material therefor, the employment of engineers, superintendents, clerks, firemen and workmen, the expenditures of money and the payment thereof is subject to the Board's approval; and on or before the 15th day of each month, the Board must make a report in writing to the City Comptroller of the amount of money expended during the previous month with its approval. The work of maintenance, repairs and renewals is carried on under the supervision of the Board and all payments of money made therefor must first have its countersign. The entire gross receipts of the Companies are divided into special funds and the ends to which these funds shall be directed are clearly defined. The Companies' books are to be kept on forms approved by the City Comptroller, must be audited annually by public accountants and be open at all times to inspection. In addition the Companies must make sworn annual reports. Clearly the only question that can fairly be raised here is the sufficiency of the City's percentage.

Another objection has reference to construction

profits on sub-contracts. If the City were to purchase the lines now and undertake the work of rehabilitation on its own account, it would have to pay brokerage fees and construction profits. In such case it could probably make no better terms than those provided in the ordinances. It certainly should not be obliged to pay such fees and profits in excess of the prevailing custom. As to the construction profits, Mr. Fisher states that similar provisions are contained in every contract for large construction work and that it has been practically impossible to make any limitation which will accurately define the sub-contracts, if any, upon which the Companies would not be entitled to a construction profit. Mr. Arnold, who will supervise the letting of every contract, is perfectly familiar from large experience with the prevailing customs in that regard and may be relied upon to protect the City from unwarranted claims for profits.

For ten years the people have been seeking a settlement of the traction question. For five years at least they have been insistent on certain particulars which they deemed essential to any such settlement. These are: First, a complete unified system; second, a short term with the right of purchase by the City, and third, ample compensation. Prior to the pending ordinances, the drafts of three ordinances, or sets of ordinances, have been reported to the Council by the Committee on Local Transportation. The first was the outline ordinance of December 11, 1901; the second was the tentative ordinance of August 24, 1904, to the Chicago City Railway Company, and the third were the ordinances of December 4, 1905, to the Chicago City Railway Company, the North Chicago Street Railroad Company and the West Chicago Street

Railroad Company. Each one of these ordinances is a distinct advance over the preceding in obtaining for the City the three essential particulars, but none of them entrench the City so securely therein as do the pending ordinances or shows so comprehensive a grasp of the situation.

With respect to the unification of the service the outline ordinance of 1901, suggested a rearrangement and joint use of the tracks and terminals in the business district with transfers from one company's lines to another, but with no provision for through routes. This is the plan declared by Arnold to be the least satisfactory, inasmuch as it would produce confusion in operation and would furnish no relief from the congestion of the downtown district. The tentative ordinance of 1904, contained similar provisions for the rearrangement and joint use of tracks in the business district, and also a limited provision for certain through routes as the City might thereafter require, but none to take immediate effect. The ordinances of 1905 provided for twenty-one through routes and universal transfers similar to the provisions of the pending ordinances. It can readily be seen that the plan for unification provided in the pending ordinances is in every way superior to those of the outline and tentative ordinances, and would be less confusing in operation than any of the preceding ordinances, inasmuch as the number of operating companies is reduced to two. Also the pending ordinances contain a plan for the solution of the Union Traction tangle, by which alone present unification is possible, and an agreement on the part of a presumably capable corporation to execute it, while the preceding ordinances contained no such promise or hope.

In the outline ordinance the duration of the grant was for twenty years with the right of the City to purchase at an appraised value after ten years; in the tentative ordinance the grant was also for twenty years with right of purchase at an appraised value after thirteen years, and in the ordinances of 1905 the grant was for twenty years with right of purchase at an appraised value after ten years. The appraisals would have required months to complete and might have led to litigation. The revocable license of the pending ordinances by which the properties may be purchased at the end of any six months' period at a valuation now fixed presents advantages to the City so vastly superior to the provisions of the preceding ordinances that comparison can scarcely be made.

As to compensation, the outline ordinance left the rate open for consideration by the Council; the tentative ordinance required the Companies to pay to the City five per cent per annum of its gross receipts for the first thirteen years and ten per cent per annum thereafter; the ordinances of 1905 provide for the payment of 4.08 per cent per annum of the gross receipts for the first three years, 6.08 per cent for each of the next two years, 8.08 per cent for each of the next ten years, and 11.08 per cent for each year thereafter. Whether the fifty-five per cent of the net receipts as provided in the pending ordinances will produce a greater sum for the City than the percentages of the gross receipts in the preceding ordinances can be known only by trial; but it is believed the returns will be much larger. As things are now running it is estimated that fifty-five per cent of the net receipts is equal to about eight per cent of the gross receipts and with

rehabilitation and improved service this percentage will be greatly increased.

In addition to the above the pending ordinances give the City powers of control which are entirely wanting or illy defined in the preceding ordinances. In the tentative ordinance the work of rehabilitation and re-equipment of the lines was to be done under the supervision and with the approval of the Commissioner of Public Works; in the ordinances of 1905, it was to be done under the supervision of the city engineer; under the pending ordinances the City has complete supervision through the Board of Engineers of all contracts, expenditures and payments of money and of the work as it progresses. In the former ordinances there were general requirements of the Companies to keep their lines and equipment in repair; in the pending ordinances special funds are set apart for depreciation and renewals to be expended under the direction of the Board of Engineers for the purposes named in creating the funds. The power of the City to control expenditures goes even to the point of placing restrictions upon the salaries of directors, officers, agents and attorneys. In matters relating to the comfort and convenience of passengers, the terms of the ordinances are explicit and full.

In all essential points the ordinances are vastly superior to any of its predecessors; they meet the demands of the people as heretofore expressed and fulfill the requirements of the "Werno Letter."

In case the Companies fail to comply fully with the terms and conditions of the ordinances, the City has three most effective remedies. It may give the Companies written notice of their failure to comply with any of the agreements contained in the ordinances, and

if such failure continues for three months thereafter it may declare all the rights and privileges of the Companies to maintain and operate lines of railways in the streets of the City forfeited and at an end; or it may take advantage of the purchase clause and take over the lines; or it may co-operate with a licensee to take over and operate the lines for the benefit of the City. These alternatives would seem sufficient to keep the Companies on their good behavior.

In considering the ordinances, one must also consider the alternative in case of their rejection. It must be remembered that the Companies still have rights in many of the streets derived from unexpired short term franchises in some cases and from the purchase clause in others. In the first class of cases the rights will soon expire; but in the second class the Companies may occupy the streets until the City exercises its option to purchase. If the City does not negotiate with the Companies, its only alternative is condemnation.

The City derives its right to condemn from the Mueller law. At the present writing this right is not fully established, inasmuch as the Supreme Court has not decided as to the validity of the law or the certificates. On the supposition that the law is valid, it would take from a year to eighteen months at the least to secure a final decision in the condemnation suit. The City could then purchase the railways but could not operate them. It would have to pay for the properties the values found in the condemnation suit and proceed on its own behalf to rehabilitate and re-equip the lines. Unless a majority of the voters would authorize additional certificates, the City would be restricted to the $75,000,000 now authorized,—a sum

declared by experts to be wholly insufficient for purchase and complete rehabilitation. Unless three-fifths of the voters would authorize municipal operation, an ordinance would have to be negotiated with an operating company and equal difficulties would be experiences in arranging the terms as in the case of the present ordinances. The City would be merely furnishing the capital for an operating company and would still have on its hands all the problems of regulation and control. The adoption of the ordinances seems preferable to the uncertainties and delays of condemnation.

The adoption of the ordinances, however, must not be construed as the final step. The movement is clearly and inevitably toward municipal ownership and operation of the street railways as a part of the larger movement toward the municipal ownership and operation of all public utilities. It is quite probable that the majorities of the past for municipal ownership do not gauge correctly the actual state of the public mind on that question. Many votes were doubtless cast in a spirit of righteous anger and justifiable irritation, and if the Companies, in case of the adoption of the ordinances, seek in good faith to carry out their provisions and give good service, such votes would probably be wanting in any future test. It is not believed, however, that there will be any real subsidence or retardation in the public demand. In due time, the timid soul will become courageous and the doubting one inspired with faith. The City has already shown its superior ability. Its leaders have won its legislative and political battles; its lawyers have won its legal battles; and its engineers have developed plans which will rescue its railways from the intolerable confusion wrought by company management. Equally well, when

the present legal and financial obstacles are overcome, will it assume and perform the added functions imposed by a correct public policy.

But without awaiting the event of municipal ownership and operation or perhaps, in lieu thereof, it is wholly possible for the City to co-operate with a number of public spirited men of recognized standing and integrity in the formation of a licensee company to operate the railways for the public benefit. The expense of organizing such a company would be amply met out of the five per cent allowed in excess of the purchase price of the railways. The salaries of officers and directors would be paid out of the operating expenses. The stock of the company would have a practically guaranteed income of five per cent per annum, would be easily convertible at any time into money or other securities and would be especially attractive to depositors in savings banks and other small investors. There would be no temptation for such a company to seek undue advantage of the City; it would tend to develop the best service and except the five per cent per annum on the stock, all the profits of operation would accrue to the City.

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